



Reprinted  
February 26, 2008

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# ENGROSSED SENATE BILL No. 345

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DIGEST OF SB 345 (Updated February 25, 2008 12:39 pm - DI 110)

**Citations Affected:** IC 5-2; IC 6-8.1; IC 10-11; IC 22-1; IC 22-2; IC 22-3; IC 22-4; IC 22-5; IC 31-25; IC 34-11; IC 34-30; IC 34-55; noncode.

**Synopsis:** Labor and safety. Requires the department of workforce development to operate a data match system with financial institutions doing business in Indiana for use only in the collection of unpaid final assessments of employer contributions for the state's unemployment insurance system. Makes it a Class A misdemeanor for certain persons to knowingly or intentionally disclose for purposes other than the collection of unpaid final assessments information provided by a financial institution that is confidential. Requires the superintendent of the state police department to: (1) negotiate terms of a memorandum of understanding (memorandum) concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate law enforcement officers to be trained under the memorandum. Prohibits an employer from knowingly employing, after June 30, 2009, an unauthorized alien. Authorizes the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; and (2) notify United States Immigration and (Continued next page)

**Effective:** Upon passage; July 1, 2008; July 1, 2009.

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## Weatherwax

(HOUSE SPONSORS — NIEZGODSKI, TYLER, BLANTON,  
TINCHER, RESKE)

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January 14, 2008, read first time and referred to Committee on Pensions and Labor.  
January 24, 2008, amended, reported favorably — Do Pass.  
January 28, 2008, read second time, amended, ordered engrossed.  
January 29, 2008, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 4, 2008, read first time and referred to Committee on Financial Institutions.  
February 14, 2008, reported — Do Pass.  
February 25, 2008, read second time, amended, ordered engrossed.

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Customs Enforcement and the department of labor (department) under certain conditions. Authorizes the department to initiate administrative proceedings against an employer for knowingly employing an unauthorized alien. Requires an administrative hearing to be conducted by an administrative law judge (ALJ) employed by the department. Allows an ALJ to order certain remedies if the ALJ determines an employer knowingly employed an unauthorized alien. Requires employers to verify the employment eligibility of an employee through the federal employment verification pilot program. Prohibits the department from initiating an administrative proceeding against an employer that verifies the employment authorization of an employed individual through the pilot program. Establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements. Makes it a Class B misdemeanor to file complaint, knowing the complaint is false or frivolous, with the attorney general. Prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. Allows a person to bring an action to compel a governmental body to comply with the prohibition. Prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the contractor employs or contracts with unauthorized aliens. Allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens. Requires the department of workforce development to verify the lawful presence of certain individuals to determine the individual's eligibility for unemployment benefits through the SAVE program. Requires the commission on Hispanic/Latino affairs to study and submit a report to the legislative council on the: (1) requirements a person must meet to qualify for naturalization; and (2) the process by which United States citizenship is conferred upon a person. Establishes the immigration cost impact commission to study and file a report with the legislative council on certain financial and other issues related to illegal immigration. Appropriates: (1) \$1,000,000 to the superintendent of the state police; (2) \$500,000 to the attorney general; (3) \$50,000 to the commission on Hispanic/Latino affairs; and (4) \$50,000 to the immigration cost impact commission. Provides that an individual performing services for a contractor is considered to be an employee of the contractor, with certain exceptions. Provides for investigations of the employment relationship between an individual and a contractor by the department of labor, procedures to be followed for investigations, and for various civil penalties to be assessed by the department of labor for: (1) the failure to properly classify the individual; and (2) retaliation against certain persons. Provides that certain information pertaining to employee classification shared between several state agencies is confidential and may not be published or open to public inspection. Exempts money in health savings accounts from execution of certain judgments. Makes conforming amendments.

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Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

**ENGROSSED**  
**SENATE BILL No. 345**

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety and to make an appropriation.

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

1 SECTION 1. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2008]:

4 **Chapter 18. Citizenship and Immigration Status Information**

5 **Sec. 1. As used in this chapter, "governmental body" has the**  
6 **meaning set forth in IC 5-22-2-13.**

7 **Sec. 2. A governmental body may not enact an ordinance, a**  
8 **resolution, a rule, or a policy that prohibits or in any way restricts**  
9 **another governmental body, including a law enforcement officer**  
10 **(as defined in IC 5-2-1-2), a state or local official, or a state or local**  
11 **government employee, from taking the following actions with**  
12 **regard to information concerning the citizenship or immigration**  
13 **status, lawful or unlawful, of an individual:**

- 14 (1) **Communicating or cooperating with federal officials.**  
15 (2) **Sending to or receiving information from the United States**  
16 **Department of Homeland Security.**  
17 (3) **Maintaining information.**

ES 345—LS 6832/DI 102+



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1           **(4) Exchanging information with another federal, state, or**  
2           **local government entity.**  
3           **Sec. 3. If a governmental body violates this chapter, a person**  
4           **lawfully domiciled in Indiana may bring an action to compel the**  
5           **governmental body to comply with this chapter.**  
6           SECTION 2. IC 6-8.1-3-21 IS ADDED TO THE INDIANA CODE  
7           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8           1, 2008]: **Sec. 21. (a) This section applies after December 31, 2008.**  
9           **(b) The department shall cooperate with the:**  
10           **(1) department of labor created by IC 22-1-1-1;**  
11           **(2) worker's compensation board of Indiana created by**  
12           **IC 22-3-1-1(a); and**  
13           **(3) department of workforce development established by**  
14           **IC 22-4.1-2-1;**  
15           **by sharing information concerning any suspected misclassification**  
16           **by a contractor (as defined in IC 22-2-14-5) of an employee as an**  
17           **independent contractor. Information shared pursuant to this**  
18           **section is confidential and may not be published or open to public**  
19           **inspection.**  
20           SECTION 3. IC 6-8.1-8-8.7, AS ADDED BY P.L.226-2007,  
21           SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
22           UPON PASSAGE]: **Sec. 8.7. (a) The department shall operate a data**  
23           **match system with each financial institution doing business in Indiana.**  
24           **(b) Each financial institution doing business in Indiana shall provide**  
25           **information to the department on all individuals:**  
26           **(1) who hold one (1) or more accounts with the financial**  
27           **institution; and**  
28           **(2) upon whom a levy may be issued by the department or a**  
29           **county treasurer.**  
30           **(c) To provide the information required under subsection (b), a**  
31           **financial institution shall do one (1) of the following:**  
32           **(1) Identify individuals by comparing records maintained by the**  
33           **financial institution with records provided by the department by:**  
34           **(A) name; and**  
35           **(B) either:**  
36           **(i) Social Security number; or**  
37           **(ii) tax identification number.**  
38           **(2) Comply with IC 31-25-4-31(c)(2). The child support bureau**  
39           **established by IC 31-25-3-1 shall regularly make reports**  
40           **submitted under IC 31-25-4-31(c)(2) available accessible to the**  
41           **department or its agents for use only in tax judgment and levy**  
42           **administration.**

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- 1 (d) The information required under subsection (b) must:
- 2 (1) be provided on a quarterly basis; and
- 3 (2) include the:
- 4 (A) name;
- 5 (B) address of record; and
- 6 (C) either:
- 7 (i) the Social Security number; or
- 8 (ii) tax identification number;
- 9 of individuals identified under subsection (b).
- 10 (e) When the department determines that the information required
- 11 under subsection (d)(2) is identical for an individual who holds an
- 12 account with a financial institution and an individual against whom a
- 13 levy may be issued by the department or a county treasurer, the
- 14 department or its agents shall provide a notice of the match, in
- 15 compliance with section 4 of this chapter, if action is to be initiated to
- 16 levy or encumber the account.
- 17 (f) This section does not preclude a financial institution from
- 18 exercising its right to:
- 19 (1) charge back or recoup a deposit to an account; or
- 20 (2) set off from an account held by the financial institution in
- 21 which the individual has an interest in any debts owed to the
- 22 financial institution that existed before:
- 23 (A) the state's levy; and
- 24 (B) notification to the financial institution of the levy.
- 25 (g) A financial institution ordered to block or encumber an account
- 26 under this section is entitled to collect its normally scheduled account
- 27 activity fees to maintain the account during the period the account is
- 28 blocked or encumbered.
- 29 (h) All information provided by a financial institution under this
- 30 section is confidential and is available only to the department or its
- 31 agents for use only in levy collection activities.
- 32 (i) A financial institution providing information required under this
- 33 section is not liable for:
- 34 (1) disclosing the required information to the department or the
- 35 child support bureau established by IC 31-25-3-1;
- 36 (2) blocking or surrendering an individual's assets in response to
- 37 a levy imposed under this section by:
- 38 (A) the department; or
- 39 (B) a person or an entity acting on behalf of the department; or
- 40 (3) any other action taken in good faith to comply with this
- 41 section.
- 42 (j) **A person or an entity that is acting on behalf of the**

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1 **department is not liable for any action taken in good faith to collect**  
2 **the state's levy under this section unless:**

3 **(1) the action is contrary to the department's direction to the**  
4 **person or entity; or**

5 **(2) for information provided under this section, the person or**  
6 **entity acts with:**

7 **(A) deliberate ignorance of the truth or falsity of the**  
8 **information; or**

9 **(B) reckless disregard for the truth or falsity of the**  
10 **information.**

11 ~~(j)~~ **(k)** The department or its agents shall pay a financial institution  
12 performing the data match required by this section a reasonable fee, as  
13 determined by the department, of at least five dollars (\$5) for each levy  
14 issued to the financial institution.

15 ~~(k)~~ **(l)** This section does not prevent the department or its agents  
16 from encumbering an obligor's account with a financial institution by  
17 any other remedy available under the law.

18 SECTION 4. IC 6-8.1-9-14, AS AMENDED BY P.L.103-2007,  
19 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
20 JULY 1, 2008]: Sec. 14. (a) Except as provided in subsection (n), the  
21 department shall establish, administer, and make available a  
22 centralized debt collection program for use by state agencies to collect  
23 delinquent accounts, charges, fees, loans, taxes, **civil penalties under**  
24 **IC 22-2-14-13**, or other indebtedness owed to or being collected by  
25 state agencies. The department's collection facilities shall be available  
26 for use by other state agencies only when resources are available to the  
27 department.

28 (b) The commissioner shall prescribe the appropriate form and  
29 manner in which collection information is to be submitted to the  
30 department.

31 (c) The debt must be delinquent and not subject to litigation, claim,  
32 appeal, or review under the appropriate remedies of a state agency.

33 (d) The department has the authority to collect for the state or  
34 claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts,  
35 charges, fees, loans, taxes, or other indebtedness due the state or  
36 claimant agency that has a formal agreement with the department for  
37 central debt collection.

38 (e) The formal agreement must provide that the information  
39 provided to the department be sufficient to establish the obligation in  
40 court and to render the agreement as a legal judgment on behalf of the  
41 state. After transferring a file for collection to the department for  
42 collection, the claimant agency shall terminate all collection procedures

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1 and be available to provide assistance to the department. Upon receipt  
 2 of a file for collection, the department shall comply with all applicable  
 3 state and federal laws governing collection of the debt.

4 (f) The department may use a claimant agency's statutory authority  
 5 to collect the claimant agency's delinquent accounts, charges, fees,  
 6 loans, taxes, or other indebtedness owed to the claimant agency.

7 (g) The department's right to credit against taxes due may not be  
 8 impaired by any right granted the department or other state agency  
 9 under this section.

10 (h) The department of state revenue may charge the claimant agency  
 11 a fee not to exceed fifteen percent (15%) of any funds the department  
 12 collects for a claimant agency. Notwithstanding any law concerning  
 13 delinquent accounts, charges, fees, loans, taxes, or other indebtedness,  
 14 the fifteen percent (15%) fee shall be added to the amount due to the  
 15 state or claimant agency when the collection is made.

16 (i) Fees collected under subsection (h) shall be retained by the  
 17 department after the debt is collected for the claimant agency and are  
 18 appropriated to the department for use by the department in  
 19 administering this section.

20 (j) The department shall transfer any funds collected from a debtor  
 21 to the claimant agency within thirty (30) days after the end of the  
 22 month in which the funds were collected.

23 (k) When a claimant agency requests collection by the department,  
 24 the claimant agency shall provide the department with:

25 (1) the full name;  
 26 (2) the Social Security number or federal identification number,  
 27 or both;  
 28 (3) the last known mailing address; and  
 29 (4) additional information that the department may request;  
 30 concerning the debtor.

31 (l) The department shall establish a minimum amount that the  
 32 department will attempt to collect for the claimant agency.

33 (m) The commissioner shall report, not later than March 1 for the  
 34 previous calendar year, to the governor, the budget director, and the  
 35 legislative council concerning the implementation of the centralized  
 36 debt collection program, the number of debts, the dollar amounts of  
 37 debts collected, and an estimate of the future costs and benefits that  
 38 may be associated with the collection program. A report to the  
 39 legislative council under this subsection must be in an electronic  
 40 format under IC 5-14-6.

41 (n) The department may not assess a fee to a state agency or a  
 42 custodial parent for seeking a setoff to a state or federal income tax

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refund for past due child support.

SECTION 5. IC 10-11-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 21.5. (a) As used in this section, "law enforcement officer" means a:**

- (1) police employee;**
- (2) county sheriff;**
- (3) county police officer;**
- (4) county police reserve officer;**
- (5) city police officer;**
- (6) city police reserve officer;**
- (7) town marshal;**
- (8) deputy town marshal; or**
- (9) member of a consolidated law enforcement department established under IC 36-3-1-5.1.**

**(b) The superintendent shall negotiate the terms of a memorandum of understanding between the state and the United States Department of Justice or the United States Department of Homeland Security concerning a pilot project for the enforcement of federal immigration and customs laws in Indiana.**

**(c) The memorandum of understanding described in subsection (b) must be signed on behalf of the state by the superintendent and governor, unless otherwise required by the United States Department of Justice or the United States Department of Homeland Security.**

**(d) The superintendent shall designate appropriate law enforcement officers to be trained under the memorandum of understanding described in subsection (b).**

**(e) The department shall apply for federal funding, as available, for the costs associated with training law enforcement officers under the memorandum of understanding described in subsection (b).**

**(f) A law enforcement officer certified as trained in accordance with the memorandum of understanding described in subsection (b) may enforce federal immigration and customs laws while performing within the scope of the law enforcement officer's duties.**

**(g) The superintendent shall coordinate efforts, as needed, with the executive director of the department of homeland security to address issues of national security in implementing this section.**

SECTION 6. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1 1, 2009]: **Sec. 22. (a) The department of labor shall employ a**  
2 **sufficient number of administrative law judges to hear and decide**  
3 **cases initiated by the department under IC 22-5-1.5.**

4 **(b) An administrative law judge employed by the department is**  
5 **subject to IC 4-21.5.**

6 SECTION 7. IC 22-1-1-23 IS ADDED TO THE INDIANA CODE  
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2008]: **Sec. 23. The department of labor shall cooperate with the:**

9 **(1) department of workforce development established by**  
10 **IC 22-4.1-2-1;**

11 **(2) department of state revenue established by IC 6-8.1-2-1;**  
12 **and**

13 **(3) worker's compensation board of Indiana created by**  
14 **IC 22-3-1-1(a);**

15 **by sharing information concerning any suspected misclassification**  
16 **by a contractor (as defined in IC 22-2-14-5) of an employee as an**  
17 **independent contractor. Information shared pursuant to this**  
18 **section is confidential and may not be published or open to public**  
19 **inspection.**

20 SECTION 8. IC 22-2-14 IS ADDED TO THE INDIANA CODE AS  
21 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
22 1, 2008]:

23 **Chapter 14. Employee Classification Act**

24 **Sec. 1. This chapter applies after December 31, 2008.**

25 **Sec. 2. This chapter is intended to address the practice of**  
26 **misclassifying employees as independent contractors.**

27 **Sec. 3. As used in this chapter, "agent of the contractor" means:**

28 **(1) an individual having management authority or**  
29 **enforcement powers with respect to a practice or policy of the**  
30 **contractor regarding the classification of an employee;**

31 **(2) a corporate officer; or**

32 **(3) a member of the board of directors;**

33 **of the contractor.**

34 **Sec. 4. As used in this chapter, "construction" means any**  
35 **constructing, altering, reconstructing, repairing, rehabilitating,**  
36 **refinishing, refurbishing, remodeling, remediating, renovating,**  
37 **custom fabricating, maintenance, landscaping, improving,**  
38 **wrecking, painting, decorating, demolishing, and adding to or**  
39 **subtracting from any building, structure, airport facility, highway,**  
40 **roadway, street, bridge, alley, bridge, sewer, drain, ditch, sewage**  
41 **disposal plant, waterworks, parking facility, railroad, excavation,**  
42 **or other project, development, real property or improvement, or**

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1 doing any part of these actions. It is immaterial whether or not the  
 2 performance of the work described involves the addition of any  
 3 material or article of merchandise to, or fabrication into, a  
 4 structure, project, development, real property, or improvement  
 5 described in this section. The term includes moving construction  
 6 related materials to or from the job site.

7 Sec. 5. As used in this chapter, "contractor" means any sole  
 8 proprietor, partnership, firm, corporation, limited liability  
 9 company, association, or other legal entity that engages in  
 10 construction authorized by law to do business within Indiana. The  
 11 term includes a general contractor, a subcontractor, and a lower  
 12 tiered contractor. The term does not include the state, the federal  
 13 government, or a political subdivision.

14 Sec. 6. As used in this chapter, "department" means the  
 15 department of labor created by IC 22-1-1-1. The term includes the  
 16 commissioner, employees of the department, and agents authorized  
 17 by the commissioner to act on behalf of the department.

18 Sec. 7. As used in this chapter, "interested party" means a  
 19 person with an interest in compliance with this chapter. The term  
 20 does not require that a person be aggrieved in order to be  
 21 considered an interested party.

22 Sec. 8. As used in this chapter, "political subdivision" has the  
 23 meaning set forth in IC 36-1-2-13.

24 Sec. 9. As used in this chapter, "performing services" means  
 25 performing construction services.

26 Sec. 10. As used in this chapter, "public work" includes any  
 27 public building, structure, airport facility, highway, roadway,  
 28 street, alley, bridge, sewer, drain, ditch, sewage disposal plant,  
 29 water works, parking facility, railroad, excavation, or other  
 30 project, development, real property, or improvement that is paid  
 31 for in whole or in part out of public funds or a special assessment.  
 32 The term also includes any public work leased by a political  
 33 subdivision under a lease containing an option to purchase.

34 Sec. 11. (a) An individual performing services for a contractor  
 35 is considered to be an employee of the contractor unless:

36 (1) the:

37 (A) individual has been and will continue to be free from  
 38 control or direction over the performance of the service for  
 39 the contractor, both under the individual's contract of  
 40 service and in fact; and

41 (B) individual is engaged in an independently established  
 42 trade, occupation, profession, or business;

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- (2) the individual is determined to be a legitimate sole proprietor or partnership because:**
  - (A) the sole proprietor or partnership is performing the service without substantial direction and control as to the means and manner of providing the services, subject only to the right of the contractor, for whom the service is provided, to specify the desired result;**
  - (B) the sole proprietor or partnership has a substantial investment of capital in the sole proprietorship;**
  - (C) the sole proprietor or partnership owns the capital goods, gains the profits, and bears the losses of the sole proprietorship or partnership;**
  - (D) the sole proprietor or partnership makes its services available to the general public or the business community on a continuing basis;**
  - (E) the sole proprietor or partnership includes services rendered on a federal income tax schedule as an independent business or profession;**
  - (F) the sole proprietor or partnership performs services for the contractor under the sole proprietor's or partnership's name and the contractor pays the sole proprietor or partnership a flat fee or other agreed amount of compensation that is not based on an established rate for any time period of work;**
  - (G) the sole proprietor or partnership obtains and pays for the license or permit in the sole proprietor's or partnership's name when the services being provided require a license or permit;**
  - (H) the sole proprietor or partnership furnishes the tools and equipment necessary to provide the service;**
  - (I) if necessary, the sole proprietor or partnership hires its own employees, pays the employees without reimbursement from the contractor, and reports the employees' income to the Internal Revenue Service;**
  - (J) the contractor does not:**
    - (i) represent the sole proprietor or partnership as an employee of the contractor to its customers; or**
    - (ii) reimburse the sole proprietor or partnership for its business expenses;**
  - (K) the sole proprietor or partnership has the right to choose to perform similar services for others; and**
  - (L) the sole proprietorship or partnership has a written**

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- 1           **agreement with the contractor describing the intended**
- 2           **business relationship;**
- 3           **(3) the individual is an owner-operator that provides a motor**
- 4           **vehicle and the services of a driver under a written contract**
- 5           **that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR**
- 6           **376, to a motor carrier; or**
- 7           **(4) the individual provides professional services to**
- 8           **construction projects, including a realtor, a decorator, a**
- 9           **project developer, a surveyor, or an office employee.**
- 10          **(b) A sole proprietor or partnership that is performing services**
- 11          **for a contractor as a subcontractor and does not meet the**
- 12          **requirements of subsection (a)(2) is considered an individual for**
- 13          **purposes of this chapter.**
- 14          **(c) In determining whether a contractor properly classifies an**
- 15          **individual as an employee, the department shall consider whether**
- 16          **the contractor does the following on behalf of the individual:**
- 17               **(1) Withholds, reports, and remits payroll taxes.**
- 18               **(2) Pays contributions to the unemployment insurance benefit**
- 19               **fund established by IC 22-4-26-1.**
- 20               **(3) Maintains worker's compensation insurance as required**
- 21               **by IC 22-3-5.**
- 22               **(4) Pays one and one-half (1 1/2) times the regular hourly rate**
- 23               **of wages for hours worked in excess of forty (40) hours in a**
- 24               **workweek.**
- 25          **(d) A contractor shall maintain records for a period of not less**
- 26          **than three (3) years for an individual performing services for the**
- 27          **contractor, regardless of whether the individual is classified as:**
- 28               **(1) an employee;**
- 29               **(2) an independent contractor;**
- 30               **(3) a sole proprietor; or**
- 31               **(4) a partnership.**
- 32          **(e) Records to be maintained by the contractor must include all**
- 33          **documents related to, or tending to establish the nature of, the**
- 34          **relationship between the contractor and an individual performing**
- 35          **services for the contractor. Records that must be maintained for an**
- 36          **individual performing services for the contractor include, but are**
- 37          **not limited to:**
- 38               **(1) the:**
- 39                   **(A) name;**
- 40                   **(B) address;**
- 41                   **(C) phone number; and**
- 42                   **(D) Social Security number, individual taxpayer**

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- 1 identification number, or federal tax identification
- 2 number;
- 3 (2) the type of work performed;
- 4 (3) all invoices, billing statements, payroll records, or other
- 5 payment records, including the dates of payments, and any
- 6 miscellaneous income paid or deductions made;
- 7 (4) copies of all contracts with the individual, agreements with
- 8 the individual, applications for employment by the individual
- 9 with the contractor; and
- 10 (5) any federal and state tax documents.

11 Sec. 12. (a) It is a violation of section 11(a) of this chapter for a  
 12 contractor or an agent of a contractor to fail to properly classify an  
 13 individual as an employee unless the relationship between the  
 14 individual and the contractor is excluded under section 11(a) of this  
 15 chapter.

16 (b) A contractor is not liable under this chapter for the failure  
 17 of a subcontractor or a lower tiered subcontractor to properly  
 18 classify persons performing services as employees.

19 Sec. 13. (a) A contractor or an agent of the contractor that  
 20 violates this chapter is subject to a civil penalty not to exceed one  
 21 thousand five hundred dollars (\$1,500) for each violation found by  
 22 the first audit or investigation performed by the department. After  
 23 a second or subsequent audit or investigation, a contractor or an  
 24 agent of the contractor is subject to a civil penalty not to exceed  
 25 two thousand five hundred dollars (\$2,500) for each repeat  
 26 violation found by the department within a five (5) year period  
 27 after the first violation. For purposes of this section, each violation  
 28 of this chapter for each person and for each day the violation  
 29 continues shall constitute a separate and distinct violation.

30 (b) The department shall consider the appropriateness of the  
 31 amount of a penalty to the contractor or agent of the contractor  
 32 charged upon the determination of the gravity of the violation.

33 (c) The department may assess up to twice the civil penalty  
 34 under subsection (a) against a contractor or an agent of a  
 35 contractor that:

- 36 (1) intentionally violates this chapter; or
- 37 (2) obstructs the department during an inspection of a place
- 38 of employment during an investigation authorized under
- 39 section 17(a) of this chapter concerning this chapter.

40 The amount of the penalty determined may be recovered, if  
 41 necessary, in a civil action brought by the attorney general on  
 42 behalf of the department. Any uncollected amount under this

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subsection or subsection (a) is subject to IC 6-8.1-9-14.

Sec. 14. (a) The department shall post a summary of the requirements of this chapter on its official Internet web site.

(b) The department also shall maintain the list set forth in section 18(e) of this chapter concerning contractors that are barred from performing public works contracts.

Sec. 15. A contractor for which one (1) or more individuals perform services who are not classified as employees under section 11(a) of this chapter shall post and keep posted a notice, prepared by the department, summarizing the requirements of this chapter. The notice shall be posted in a conspicuous place on a job site where the individual performs services and in each of the offices of the contractor. The department shall furnish copies of summaries without charge to a contractor upon request.

Sec. 16. (a) An interested party may file a complaint with the department against a contractor or an agent of the contractor if the interested party has a reasonable belief that the contractor or the agent of the contractor is in violation of this chapter. The complaint shall be filed on a form to be supplied by the department and in a manner prescribed by the department. The department may not investigate a complaint for a violation alleged to have occurred before January 1, 2009.

(b) The department shall conduct an investigation to ascertain the facts relating to the violation alleged in the complaint and determine whether a violation under this chapter has occurred. The investigation may be made by written or oral inquiry, field visit, conference, or any method or combination of methods the department considers suitable. The following apply to the investigation:

- (1) If a contractor refuses to cooperate, the department may make a finding that there is a violation of this chapter.
- (2) Complainants must provide the department with a notice of a change of address or telephone number or a prolonged absence from the current address so that the department can fully investigate the complaint. A complainant shall cooperate with the department, provide necessary information, and be available for interviews and conferences upon reasonable notice or request by the department. If a complainant cannot be located or does not respond to reasonable requests by the department, the department may dismiss the individual from the complaint.
- (3) The department may investigate alleged violations not

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longer than three (3) years preceding the date the complaint was filed.

(4) Before making a final determination of a violation, the department shall notify the contractor of the substance of the department’s investigation and afford the contractor an opportunity to present any written information within fifteen (15) calendar days for the department to consider in reaching its final determination.

(c) As part of its investigation, the department may convene a factfinding conference in person or by telephone to obtain additional information or evidence, identify the issues in dispute, ascertain the positions of the parties, and explore the possibility of settlement. The factfinding conference must be limited to those issues the department believes to be relevant. The following apply to the conference:

- (1) Notice of the conference shall:
  - (A) be given to all parties at least ten (10) calendar days before the conference; and
  - (B) identify the individual requested to attend on behalf of each party.
- (2) A party may be accompanied to a factfinding conference by:
  - (A) the party’s attorney or other representative; and
  - (B) a translator if necessary.
- (3) A departmental investigator shall conduct the conference and control the proceedings. No tape recording, stenographic report, or other verbatim record of the conference may be made. If an individual fails to cooperate at the conference and becomes so disruptive or abusive that a full and fair conference cannot be conducted, the departmental investigator shall exclude the individual from the conference.
- (4) A complainant who fails to attend a factfinding conference may be dismissed from the complaint. If a contractor fails to attend a factfinding conference, the department may make a finding that there is a violation of this chapter.

Sec. 17. (a) The department:

- (1) may conduct investigations in connection with the administration and enforcement of this chapter;
  - (2) shall enforce the provisions of this chapter; and
  - (3) may hire investigators and other personnel necessary to carry out the purpose of this chapter.
- (b) An employee of the department has authority to visit and

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1 inspect, at all reasonable times, a worksite subject to the provisions  
2 of this chapter and has authority to inspect, at all reasonable times,  
3 documents related to the determination of whether an individual  
4 is an employee under section 11(a) of this chapter.

5 (c) The commissioner or a representative of the commissioner  
6 may:

- 7 (1) compel, by subpoena, the attendance and testimony of
- 8 witnesses and the production of books, payrolls, records,
- 9 papers, and other evidence in an investigation; and
- 10 (2) administer oaths to witnesses.

11 Sec. 18. (a) Whenever the department believes, after  
12 investigation, that a violation of this chapter has occurred, the  
13 department may:

- 14 (1) issue and cause to be served on a person an order to cease
- 15 and desist from further violation of the chapter;
- 16 (2) take affirmative or other action considered reasonable to
- 17 eliminate the effect of the violation;
- 18 (3) collect the amount of wages, salary, employment benefits,
- 19 or other compensation denied or lost to an individual; or
- 20 (4) assess a civil penalty allowed under section 13 of this
- 21 chapter.

22 A civil penalty assessed by the department and any other relief  
23 requested by the department is recoverable in an action brought by  
24 the attorney general.

25 (b) When it appears to the department that a contractor or an  
26 agent of the contractor has violated a valid order of the  
27 department issued under this chapter, the department may:

- 28 (1) commence an action through the attorney general; and
- 29 (2) seek an order from the superior or circuit court in the
- 30 county in which the contractor does business, mandating the
- 31 contractor or the agent of the contractor to obey the order of
- 32 the department.

33 The failure of the contractor or the agent of the contractor to obey  
34 the order of the court is contempt of court.

35 (c) Whenever the department determines that a violation of this  
36 chapter has occurred, the department shall notify the contractor  
37 or agent of the contractor in writing of the violation. A contractor  
38 or an agent of a contractor that receives:

- 39 (1) an order based on a violation;
- 40 (2) a civil penalty assessment;
- 41 (3) a cease and desist order; or
- 42 (4) any combination of subdivisions (1) through (3);

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1 from the department may seek a hearing on the determination by  
 2 filing a written petition for review with the department within ten  
 3 (10) business days after receipt of the determination and in  
 4 accordance with IC 4-21.5-3-2. The petition for review must  
 5 contain a statement of the basis for the contest. The department  
 6 shall mail a copy of the petition for review to the complainant and  
 7 to any interested party designated on the complaint. The  
 8 contractor shall post a copy of the petition for review  
 9 contemporaneously with the filing of the petition at or near the  
 10 place where the alleged violation occurred, or if the contractor is  
 11 no longer performing services at the place where the alleged  
 12 violation occurred, at the contractor's principal place of business  
 13 in a conspicuous place where labor notices regularly are posted.  
 14 Further, the contractor shall post a bond in an amount sufficient  
 15 to pay wages, salary, employment benefits, or other compensation  
 16 lost or denied to the individual as determined by the department  
 17 and civil penalties assessed by the department contemporaneously  
 18 with the filing of the petition. If the contractor or an agent of the  
 19 contractor does not file a petition for review and post a bond  
 20 within the ten (10) business day period, the department's  
 21 determination shall be final.

22 (d) If the contractor or agent of the contractor files a timely  
 23 petition for review, the commissioner shall set a hearing on the  
 24 alleged violation. The hearing must take place not more than  
 25 forty-five (45) calendar days after the receipt of the request for the  
 26 hearing by the department. The hearing must be held in  
 27 accordance with IC 4-21.5.

28 (e) After the second or subsequent violation determined by the  
 29 department that occurs within five (5) years of an earlier violation,  
 30 the department shall place the contractor's name on a list  
 31 maintained on the Internet web site of the department as required  
 32 under section 14(b) of this chapter. A contract for a public work  
 33 may not be awarded by the state or a political subdivision to:

- 34 (1) a contractor whose name appears on the list; or
- 35 (2) a firm, a corporation, a partnership, or an association in
- 36 which the contractor has an interest;

37 until four (4) years have elapsed after the posting of the name on  
 38 the list. If a contractor or agent of the contractor files a timely  
 39 petition for review as set forth under subsection (c), the  
 40 contractor's name shall not be added to the list until the  
 41 department's determination that the contractor or agent of the  
 42 contractor has violated this chapter is final.

COPY



1           **Sec. 19. (a) The employee classification fund is established to:**  
 2               **(1) administer this chapter;**  
 3               **(2) investigate contractors and agents of contractors; and**  
 4               **(3) fund other expenses incurred in carrying out the duties of**  
 5               **the department under this chapter.**

6           **The fund consists of civil penalties collected by the department**  
 7           **under this chapter. The fund shall be administered by the**  
 8           **department.**

9               **(b) The expenses of administering the fund shall be paid from**  
 10              **money in the fund.**

11              **(c) The treasurer of state shall invest the money in the fund not**  
 12              **currently needed to meet the obligations of the fund in the same**  
 13              **manner as other public money may be invested. The interest that**  
 14              **accrues from these investments shall be deposited in the fund.**

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

17           **Sec. 20. (a) It is a violation of this chapter for a contractor or an**  
 18           **agent of a contractor to retaliate through discharge or in any other**  
 19           **manner against a person for exercising a right granted under this**  
 20           **chapter. Retaliation subjects a contractor or an agent of a**  
 21           **contractor to civil penalties under section 13 of this chapter or a**  
 22           **private cause of action, or both.**

23              **(b) It is a violation of this chapter for a contractor or an agent**  
 24              **of a contractor to retaliate against a person for:**

25                   **(1) making a complaint to a contractor or an agent of a**  
 26                   **contractor, to a coworker, to a community organization, to a**  
 27                   **state or federal agency, or within a public hearing that rights**  
 28                   **guaranteed under this chapter have been violated;**

29                   **(2) causing a proceeding under or related to this chapter to be**  
 30                   **instituted; or**

31                   **(3) testifying or preparing to testify in an investigation or**  
 32                   **proceeding under this chapter.**

33           **Sec. 21. (a) A person aggrieved by a contractor or an agent of a**  
 34           **contractor for a violation of this chapter may file suit in circuit**  
 35           **court in the county where the alleged offense occurred or where**  
 36           **any person who is a party to the action resides, without regard to**  
 37           **exhaustion of any alternative administrative remedies provided in**  
 38           **this chapter. A person whose rights have been violated under this**  
 39           **chapter by a contractor or an agent of a contractor is entitled to**  
 40           **collect:**

41                   **(1) the amount of any wages, salary, employment benefits, or**  
 42                   **other compensation denied or lost to the person because of the**

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- 1 violation;
- 2 (2) any other compensatory damages;
- 3 (3) in the case of an intentional violation, punitive damages in
- 4 an amount equal to the civil penalties assessed under section
- 5 13(c) of this chapter;
- 6 (4) in the case of unlawful retaliation as set forth in section 20
- 7 of this chapter, all legal or equitable relief, or both, as
- 8 appropriate; and
- 9 (5) attorney's fees and costs.

10 (b) The right of an interested party or aggrieved person to bring  
 11 an action under this chapter terminates three (3) years after the  
 12 final date of performing services for the contractor by the affected  
 13 employee. The period of limitation is tolled if the contractor or an  
 14 agent of the contractor has deterred a person's exercise of rights  
 15 under this chapter.

16 Sec. 22. A person may not waive any provision of this chapter.

17 Sec. 23. A finding made under this chapter:

- 18 (1) is for the purpose of enforcing this chapter; and
- 19 (2) is not admissible or binding against a party in another
- 20 proceeding.

21 Sec. 24. The department, the department of workforce  
 22 development established by IC 22-4.1-2-1, the department of state  
 23 revenue established by IC 6-8.1-2-1, and the worker's  
 24 compensation board of Indiana created by IC 22-3-1-1(a) shall  
 25 cooperate under this chapter by sharing information concerning  
 26 any suspected misclassification of an employee as an independent  
 27 contractor by a contractor or an agent of a contractor. Upon  
 28 determining that a contractor or an agent of a contractor has  
 29 classified an employee as an independent contractor in violation of  
 30 this chapter, the department shall notify the:

- 31 (1) department of workforce development, which shall check
- 32 the contractor's compliance with laws under IC 22-4 and
- 33 IC 22-4.1;
- 34 (2) the department of state revenue, which shall check the
- 35 contractor's compliance with laws under IC 6; and
- 36 (3) the worker's compensation board of Indiana, which shall
- 37 check the contractor's compliance with laws under IC 22-3.

38 SECTION 9. IC 22-3-1-5 IS ADDED TO THE INDIANA CODE  
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 40 1, 2008]: Sec. 5. (a) This section applies after December 31, 2008.

41 (b) The worker's compensation board of Indiana shall cooperate  
 42 with the:

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1           (1) department of state revenue established by IC 6-8.1-2-1;  
 2           (2) department of labor created by IC 22-1-1-1; and  
 3           (3) department of workforce development established by  
 4           IC 22-4.1-2-1;  
 5           by sharing information concerning any suspected misclassification  
 6           by a contractor (as defined in IC 22-2-14-5) of an employee as an  
 7           independent contractor. Information shared pursuant to this  
 8           section is confidential and may not be published or open to public  
 9           inspection.

10           SECTION 10. IC 22-4-14-9 IS AMENDED TO READ AS  
 11           FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) **As used in this**  
 12           **section, "SAVE program" means the Systematic Alien Verification**  
 13           **of Entitlements program operated by the United States**  
 14           **Department of Homeland Security or a successor program**  
 15           **designated by the United States Department of Homeland Security.**

16           (b) For weeks of unemployment occurring subsequent to December  
 17           31, 1977, benefits may not be paid on the basis of services performed  
 18           by an alien unless the alien is an individual who has been lawfully  
 19           admitted for permanent residence at the time the services are  
 20           performed, is lawfully present for purposes of performing the services,  
 21           or otherwise is permanently residing in the United States under color  
 22           of law at the time the services are performed (including an alien who  
 23           is lawfully present in the United States as a result of the application of  
 24           the provisions of Section 207, Section 208, or Section 212(d)(5) of the  
 25           Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

26           (1) Any data or information required of individuals applying for  
 27           benefits to determine whether benefits are not payable to them  
 28           because of their alien status shall be uniformly required from all  
 29           applicants for benefits.

30           (2) In the case of an individual whose application for benefits  
 31           would otherwise be approved, no determination that benefits to  
 32           the individual are not payable because of ~~his~~ **the individual's**  
 33           alien status may be made except upon a preponderance of the  
 34           evidence.

35           (3) Any modifications to the provisions of Section 3304(a)(14) of  
 36           the Federal Unemployment Tax Act, as provided by P.L.94-566,  
 37           which specify other conditions or other effective date than stated  
 38           in this section for the denial of benefits based on services  
 39           performed by aliens and which are required to be implemented  
 40           under state law as a condition for full tax credit against the tax  
 41           imposed by the Federal Unemployment Tax Act, shall be  
 42           considered applicable under this section.

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1 (c) If an individual who applies for benefits is not a citizen or  
2 national of the United States, the department shall verify the lawful  
3 presence of the individual to determine the individual's eligibility  
4 for benefits through the SAVE program. The department shall  
5 implement this subsection in accordance with federal law.

6 SECTION 11. IC 22-4-18-8 IS ADDED TO THE INDIANA CODE  
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2008]: Sec. 8. (a) This section applies after December 31, 2008.

9 (b) The department of workforce development shall cooperate  
10 with the:

- 11 (1) department of labor created by IC 22-1-1-1;
- 12 (2) department of state revenue established by IC 6-8.1-2-1;
- 13 and
- 14 (3) worker's compensation board of Indiana created by  
15 IC 22-3-1-1(a);

16 by sharing information concerning any suspected misclassification  
17 by a contractor (as defined in IC 22-2-14-5) of an employee as an  
18 independent contractor. Information shared pursuant to this  
19 section is confidential and may not be published or open to public  
20 inspection.

21 SECTION 12. IC 22-4-29-14 IS ADDED TO THE INDIANA  
22 CODE AS A NEW SECTION TO READ AS FOLLOWS  
23 [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The department shall  
24 operate a data match system with each financial institution doing  
25 business in Indiana.

26 (b) Each financial institution doing business in Indiana shall  
27 provide information to the department on all employers:

- 28 (1) that hold one (1) or more accounts with the financial  
29 institution; and
- 30 (2) that are subject to a warrant issued by the commissioner  
31 for failure to pay a final assessment for contributions,  
32 interest, penalties, and any associated collection costs.

33 (c) To provide the information required under subsection (b), a  
34 financial institution shall do one (1) of the following:

- 35 (1) Identify employers by comparing records maintained by  
36 the financial institution with records provided by the  
37 department by:
  - 38 (A) name; and
  - 39 (B) either:
    - 40 (i) Social Security number; or
    - 41 (ii) federal tax identification number.
- 42 (2) Comply with IC 31-25-4-31(c)(2). The child support

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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 in 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

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1           **the child support bureau established by IC 31-25-3-1;**  
2           **(2) blocking or surrendering an individual's assets in response**  
3           **to a levy imposed under this section by:**  
4           **(A) the department; or**  
5           **(B) a person or an entity acting on behalf of the**  
6           **department; or**  
7           **(3) any other action taken in good faith to comply with this**  
8           **section.**  
9           **(j) A person or an entity that is acting on behalf of the**  
10          **department is not liable for any action taken under this section in**  
11          **good faith to collect unpaid final assessments described in**  
12          **subsection (b)(2) unless:**  
13          **(1) the action is contrary to the department's direction to the**  
14          **person or entity; or**  
15          **(2) for information provided under this section, the person or**  
16          **entity acts with:**  
17          **(A) deliberate ignorance of the truth or falsity of the**  
18          **information; or**  
19          **(B) reckless disregard for the truth or falsity of the**  
20          **information.**  
21          **(k) The department or its agents shall pay a financial institution**  
22          **performing the data match required by this section a reasonable**  
23          **fee, as determined by the department, of at least five dollars (\$5)**  
24          **for each warrant issued to the financial institution.**  
25          **(l) This section does not prevent the department or its agents**  
26          **from encumbering an employer's account with a financial**  
27          **institution by any other remedy available under the law.**  
28          **(m) An:**  
29          **(1) officer or employee of the department; or**  
30          **(2) officer or employee of a person or entity that is acting on**  
31          **behalf of the department;**  
32          **who knowingly or intentionally discloses for a purpose other than**  
33          **the collection of unpaid final assessments described in subsection**  
34          **(b)(2) information provided by a financial institution that is**  
35          **confidential under this section commits a Class A misdemeanor.**  
36          SECTION 13. IC 22-4-31-6, AS AMENDED BY P.L.108-2006,  
37          SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38          UPON PASSAGE]: Sec. 6. (a) If, after due notice, any employing unit  
39          defaults in the payment of any contributions or other money payments  
40          required by this article, the amount due may be collected by civil action  
41          in the name of the state of Indiana on the relation of the department.  
42          Such civil action is not to be considered as the exclusive method for

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1 collection of the contributions or money payments but is in addition to  
2 the method provided in IC 22-4-29-2 through ~~IC 22-4-29-12~~  
3 **IC 22-4-29-14** and is to be brought only in such cases as the  
4 department may deem advisable in the interest of necessity and  
5 convenience.

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

9 SECTION 14. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE  
10 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2009]:

12 **Chapter 1.5. Employment of Unauthorized Aliens**

13 **Sec. 1. (a) This chapter applies only to an employee that an**  
14 **employer hires after June 30, 2009.**

15 **(b) Except as provided in subsection (c), this chapter does not**  
16 **apply to the following:**

17 (1) A public utility (as defined in IC 8-1-2-1(a)) that is subject  
18 to regulation by the Indiana utility regulatory commission  
19 under IC 8-1-2.

20 (2) A hospital licensed under IC 16-21.

21 (3) A private psychiatric institution licensed under IC 12-25.

22 (4) A community mental health center identified in  
23 IC 12-29-2-1.

24 (5) A nonprofit corporation.

25 (6) A person who operates a business of transporting  
26 emergency patients by ambulance or using a nontransporting  
27 emergency medical services vehicle (as defined in  
28 IC 16-31-3-0.5).

29 (7) A corporation organized under IC 8-1-13.

30 (8) A corporation organized under IC 23-17 that is an electric  
31 cooperative and that has at least one (1) member that is a  
32 corporation organized under IC 8-1-13.

33 (9) A municipally owned utility (as defined in IC 8-1-2-1(h)).

34 (c) The entities listed in subsection (b) are subject to section 29  
35 of this chapter.

36 **Sec. 2. As used in this chapter, "agency" means any state or**  
37 **local administration, agency, authority, board, bureau,**  
38 **commission, committee, council, department, division, institution,**  
39 **office, service, or other similar body of government created or**  
40 **established by law that issues a license for purposes of operating a**  
41 **business in Indiana.**

42 **Sec. 3. As used in this chapter, "department" refers to the**

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1 department of labor.

2 Sec. 4. As used in this chapter, "employee" means an individual  
3 who:

- 4 (1) performs services for an employer; and
- 5 (2) is an individual from whom the employer is required to
- 6 withhold wages under IC 6-3-4-8 or is an employee described
- 7 in IC 6-3-4-8(l).

8 Sec. 5. (a) As used in this chapter, "employer" means a person  
9 that:

- 10 (1) transacts business in Indiana;
- 11 (2) has a license issued by an agency; and
- 12 (3) employs one (1) or more individuals who perform
- 13 employment services in Indiana.

14 However, if the person for whom the employee performs or  
15 performed the services does not have control of the payment of the  
16 wages for the services, the term "employer" means the person  
17 having control of the payment of wages to the employee.

18 (b) The term includes the state, a political subdivision (as  
19 defined in IC 3-5-2-38) of the state, and a self-employed person.

20 Sec. 6. As used in this chapter, "knowingly" has the meaning set  
21 forth in IC 35-41-2-2.

22 Sec. 7. (a) As used in this chapter, "license" means any agency  
23 permit, certificate, approval, registration, charter, or similar  
24 authorization that is:

- 25 (1) required by law; and
  - 26 (2) issued by an agency;
- 27 for purposes of operating a business in Indiana.

28 (b) The term does not include an occupational or a professional  
29 license.

30 Sec. 8. As used in this chapter, "person" means an individual, a  
31 corporation, a limited liability company, a partnership, or another  
32 legal entity.

33 Sec. 9. As used in this chapter, "pilot program" means the  
34 employment verification pilot program administered by the United  
35 States Department of Homeland Security and the Social Security  
36 Administration, or the successor of that program.

37 Sec. 10. As used in this chapter, "unauthorized alien" has the  
38 meaning set forth in 8 U.S.C. 1324a(h)(3).

39 Sec. 11. An employer shall not knowingly employ an  
40 unauthorized alien.

41 Sec. 12. (a) The attorney general may investigate a complaint  
42 filed with the attorney general that an employer knowingly

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1 employed an unauthorized alien in violation of section 11 of this  
2 chapter.

3 (b) In investigating a complaint under subsection (a), the  
4 attorney general shall verify the work authorization of the alleged  
5 unauthorized alien with the federal government under 8 U.S.C.  
6 1373(c).

7 (c) A complaint filed with the attorney general under subsection  
8 (a) must be:

- 9 (1) in writing; and
- 10 (2) signed by the individual filing the complaint.

11 Sec. 13. A state, county, or local official or employee may not  
12 attempt to make independently a final determination as to whether  
13 an individual is authorized to work in the United States.

14 Sec. 14. (a) If, after an investigation, the attorney general  
15 determines that an employer has knowingly employed an  
16 unauthorized alien, the attorney general shall notify the United  
17 States Immigration and Customs Enforcement.

18 (b) If the attorney general determines that an employer has  
19 knowingly employed an unauthorized alien and that any defenses  
20 to knowingly employing an unauthorized alien established under  
21 this chapter do not apply, the attorney general may notify the  
22 department.

23 (c) The attorney general may not notify the department under  
24 subsection (b) about an unauthorized alien unless the attorney  
25 general determines that the defenses to knowingly employing an  
26 unauthorized alien established under this chapter do not apply.

27 Sec. 15. (a) If the attorney general notifies the department under  
28 section 14 of this chapter that an employer has knowingly  
29 employed an unauthorized alien, the department may initiate an  
30 administrative proceeding to determine if the employer has  
31 violated section 11 of this chapter.

32 (b) An administrative hearing under this chapter shall be  
33 conducted by an administrative law judge appointed by the  
34 department under IC 22-1-1-22.

35 (c) IC 4-21.5 applies to an administrative proceeding under this  
36 section.

37 (d) The department may initiate only one (1) administrative  
38 proceeding against an employer relating to the employment of all  
39 unauthorized aliens employed by the employer at the time the  
40 department initiates the administrative proceeding.

41 (e) The department may initiate an additional administrative  
42 proceeding against an employer under this section for a second or

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1 subsequent violation of section 11 of this chapter only for violations  
 2 allegedly committed by the employer after the employer receives  
 3 notice that the department has initiated an initial administrative  
 4 proceeding against the employer under this section.

5 Sec. 16. If the department initiates an administrative proceeding  
 6 under section 15 of this chapter, an administrative law judge may  
 7 hold an administrative hearing and make a determination on an  
 8 expedited basis.

9 Sec. 17. (a) Except as provided in sections 19 and 20 of this  
 10 chapter, if an administrative law judge determines that an  
 11 employer knowingly employed an unauthorized alien in violation  
 12 of section 11 of this chapter, the following apply:

13 (1) The administrative law judge may do the following:

14 (A) Order the employer to terminate the employment of all  
 15 unauthorized aliens employed by the employer.

16 (B) Place the employer on probation for a three (3) year  
 17 period. During the probationary period, the employer shall  
 18 file a quarterly report with the attorney general  
 19 concerning each new individual the employer hires at the  
 20 specific business location where the unauthorized alien  
 21 worked.

22 (C) Order the employer to file a sworn affidavit signed by  
 23 the employer with the department within three (3) business  
 24 days after the order is issued under clause (A). The  
 25 affidavit must include a statement that the employer:

26 (i) has terminated the employment of all unauthorized  
 27 aliens; and

28 (ii) will not knowingly employ an unauthorized alien.

29 (2) The administrative law judge, after considering the  
 30 relevant factors listed in subsection (b), may order an agency  
 31 to suspend, for not more than ten (10) business days, a license  
 32 described in section 18(a) of this chapter that is held by the  
 33 employer.

34 (b) An administrative law judge may consider the following  
 35 factors, if applicable, in deciding whether to order an agency to  
 36 suspend an employer's license under subsection (a)(2):

37 (1) The number of unauthorized aliens employed by the  
 38 employer.

39 (2) Any prior misconduct by the employer.

40 (3) The degree of harm resulting from the violation.

41 (4) The extent to which the employer made good faith efforts  
 42 to comply with any applicable requirements under this

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- chapter.
- (5) The duration of the violation.
- (6) The role of the directors, officers, or agents of the employer in the violation.
- (7) Any other factors the administrative law judge considers relevant.

**Sec. 18. (a) This section applies to all licenses held by an employer:**

- (1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien was employed by the employer; or
- (2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

**(b) If an employer fails to file a sworn affidavit required under section 17(a)(1)(C) of this chapter with the department within three (3) business days after the order requiring the filing of the affidavit is issued, the administrative law judge may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit described in section 17(a)(1)(C) of this chapter with the department.**

**(c) If an employer subject to an order filed under subsection (b) files a sworn affidavit required under section 17(a)(1)(C) of this chapter, the administrative law judge may order the appropriate agencies to reinstate the employer's suspended licenses.**

**Sec. 19. If:**

- (1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a second violation of section 11 of this chapter; and
- (2) the violation referred to in subdivision (1) occurred not

later than five (5) years after the date of the initial violation; the administrative law judge may order the appropriate agencies to suspend, for not more than ten (10) business days, all licenses described in section 18(a) of this chapter that are held by the employer.

**Sec. 20. (a) If:**

- (1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a third violation of section 11 of this chapter; and
- (2) the violation referred to in subdivision (1) occurred not

later than five (5) years after the date of the initial violation;

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1 the administrative law judge may order the appropriate agencies  
2 to revoke for a period of time determined by the administrative law  
3 judge or permanently revoke all licenses held by the employer that  
4 are described in section 18(a) of this chapter.

5 (b) An employer may petition the governor under IC 4-21.5-3-30  
6 to review an order issued by an administrative law judge revoking  
7 the employer's license or licenses.

8 Sec. 21. (a) An employer may, after the employer has exhausted  
9 all administrative and judicial remedies, request the governor to  
10 terminate or reduce the term of revocation of the employer's  
11 license or licenses under an order issued by an administrative law  
12 judge under section 20 of this chapter.

13 (b) The governor may terminate or reduce the term of  
14 revocation of an employer's license or licenses under an order  
15 issued by an administrative law judge under section 20 of this  
16 chapter and require the appropriate agency to reinstate the  
17 employer's license.

18 Sec. 22. (a) If an agency receives an order from an  
19 administrative law judge under section 17(a)(2), 18(b), or 19 of this  
20 chapter, the agency shall immediately suspend the license or  
21 licenses described in section 18(a) of this chapter that are held by  
22 the employer to which the order relates.

23 (b) If an agency receives an order from an administrative law  
24 judge under section 20 of this chapter, the agency shall  
25 immediately revoke the license or licenses described in section  
26 18(a) of this chapter that are held by the employer to which the  
27 order relates.

28 Sec. 23. An administrative law judge shall send copies of all  
29 orders issued under sections 17, 18, 19, and 20 of this chapter to the  
30 attorney general.

31 Sec. 24. (a) In determining whether an individual is an  
32 unauthorized alien for purposes of this chapter, an administrative  
33 law judge may consider only the federal government's verification  
34 or status information provided under 8 U.S.C. 1373(c).

35 (b) The federal government's verification or status information  
36 provided under 8 U.S.C. 1373(c) creates a rebuttable presumption  
37 of an individual's lawful status.

38 (c) An administrative law judge may:

- 39 (1) take notice of the federal government's verification or  
40 status information; and  
41 (2) request the federal government to provide automated or  
42 testimonial verification under 8 U.S.C. 1373(c).

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1           **Sec. 25.** The department may not initiate an administrative  
 2 proceeding against an employer under section 15 of this chapter  
 3 for knowingly employing an unauthorized alien if the employer  
 4 verified the employment authorization of the employed individual  
 5 through the pilot program.

6           **Sec. 26.** An employer may establish as an affirmative defense  
 7 against an alleged violation under section 11 of this chapter that  
 8 the employer complied in good faith with the requirements of 8  
 9 U.S.C. 1324a(b).

10           **Sec. 27.** The attorney general shall:

11           (1) maintain copies of orders received under section 23 of this  
 12 chapter;

13           (2) make the orders available on the attorney general's  
 14 Internet web site; and

15           (3) establish and maintain a data base of the names and  
 16 addresses of the employers that have a violation under this  
 17 chapter.

18           **Sec. 28.** This chapter does not require an employer to take any  
 19 action that the employer believes in good faith would violate  
 20 federal law.

21           **Sec. 29.** After June 30, 2009, an employer shall verify the  
 22 employment eligibility of each employee of the employer through  
 23 the pilot program after hiring the employee.

24           **Sec. 30.** A person who files a complaint with the attorney  
 25 general under this chapter, knowing that the complaint is false or  
 26 frivolous, commits a Class B misdemeanor.

27           **Sec. 31.** The suspension or revocation of a license under this  
 28 chapter does not relieve an employer from an obligation to  
 29 withhold, collect, or pay income tax on wages paid by the employer  
 30 to an employee.

31           **Sec. 32.** This chapter shall be enforced without regard to race or  
 32 national origin.

33           SECTION 15. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE  
 34 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2008]:

36           **Chapter 1.7. Public Contract for Services; Unauthorized Aliens**

37           **Sec. 1.** As used in this chapter, "contractor" means a person  
 38 that has or is attempting to enter into a public contract for services  
 39 with a state agency or political subdivision.

40           **Sec. 2.** As used in this chapter, "person" means an individual, a  
 41 corporation, a limited liability company, a partnership, or another  
 42 legal entity.

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1           **Sec. 3.** As used in this chapter, "political subdivision" has the  
2 meaning set forth in IC 36-1-2-13. However, the term does not  
3 include a hospital organized and operated under IC 16-22-2,  
4 IC 16-22-8, or IC 16-23.

5           **Sec. 4.** As used in this chapter, "public contract for services"  
6 means any type of agreement between a state agency or a political  
7 subdivision and a contractor for the procurement of services.

8           **Sec. 5.** As used in this chapter, "state agency" has the meaning  
9 set forth in IC 4-6-3-1.

10          **Sec. 6.** As used in this chapter, "subcontractor" means a person  
11 that:

12           (1) is a party to a contract with a contractor; and

13           (2) provides services for work the contractor is performing  
14 under a public contract for services.

15          **Sec. 7.** As used in this chapter, "unauthorized alien" has the  
16 meaning set forth in 8 U.S.C. 1324a(h)(3).

17          **Sec. 8.** A state agency or political subdivision may not enter into  
18 or renew a public contract for services with a contractor if the  
19 state agency or political subdivision knows that the contractor or  
20 a subcontractor of the contractor employs or contracts with an  
21 unauthorized alien.

22          **Sec. 9.** Before a state agency or political subdivision may enter  
23 into a public contract for services with a contractor, the contractor  
24 shall certify in a manner that does not violate federal law that the  
25 contractor, at the time of the certification, does not employ or  
26 contract with an unauthorized alien.

27          **Sec. 10. (a)** A contractor or a subcontractor may not knowingly  
28 employ or contract with an unauthorized alien.

29          **(b)** If a contractor or subcontractor violates this section, the  
30 state agency or political subdivision may file a complaint  
31 concerning the violation by the contractor or subcontractor with  
32 the attorney general under IC 22-5-1.5.

33          **Sec. 11.** If a contractor uses a subcontractor, the subcontractor  
34 shall certify to the contractor in a manner that does not violate  
35 federal law that the subcontractor, at the time of certification, does  
36 not employ or contract with an unauthorized alien.

37          **Sec. 12.** A contractor shall maintain on file a certification of a  
38 subcontractor under section 11 of this chapter throughout the  
39 duration of the term of a contract with the subcontractor.

40          **Sec. 13. (a)** If a contractor determines that a subcontractor is in  
41 violation of this chapter, the contractor may terminate a contract  
42 with the subcontractor for the violation.

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1           **(b) A contract terminated under subsection (a) for a violation of**  
2 **this chapter by a subcontractor may not be considered a breach of**  
3 **contract by the contractor or the subcontractor.**

4           **(c) A subcontractor may file an action with a circuit or superior**  
5 **court having jurisdiction in the county to challenge a termination**  
6 **of a contract under subsection (a) not later than twenty (20) days**  
7 **after the contractor terminates the contract with the**  
8 **subcontractor.**

9           SECTION 16. IC 31-25-4-31, AS AMENDED BY P.L.103-2007,  
10 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 UPON PASSAGE]: Sec. 31. (a) The bureau shall operate a data match  
12 system with each financial institution doing business in Indiana.

13           (b) Each financial institution doing business in Indiana shall provide  
14 information to the bureau on all noncustodial parents who:

15                 (1) hold one (1) or more accounts with the financial institution;  
16                 and

17                 (2) are delinquent.

18           (c) In order to provide the information required under subsection  
19 (b), a financial institution shall either:

20                 (1) identify noncustodial parents by comparing records  
21 maintained by the financial institution with records provided by  
22 the bureau by:

23                         (A) name; and

24                         (B) either Social Security number or tax identification number;  
25                         or

26                 (2) submit to the bureau a report, in a form satisfactory to the  
27 bureau, that includes the Social Security number or tax  
28 identification number of each individual maintaining an account  
29 at the financial institution. **The reports submitted under this**  
30 **subdivision must be accessible to:**

31                         **(A) the department of state revenue established by**  
32 **IC 6-8.1-2-1 or its agents for use only in tax judgment and**  
33 **levy administration described in IC 6-8.1-8-7(b)(2); or**

34                         **(B) the department of workforce development established**  
35 **by IC 22-4.1-2-1 or its agents for use only in the collection**  
36 **of unpaid final assessments described in**  
37 **IC 22-4-29-14(b)(2).**

38           (d) The information required under subsection (b) must:

39                 (1) be provided on a quarterly basis; and

40                 (2) include the:

41                         (A) name;

42                         (B) address of record; and

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- 1 (C) either the Social Security number or tax identification  
 2 number;  
 3 of an individual identified under subsection (b).  
 4 (e) When the bureau has determined that the information required  
 5 under subsection (d)(2) is identical for an individual who holds an  
 6 account with a financial institution and an individual whose name  
 7 appears on the quarterly list prepared by the bureau under section 30  
 8 of this chapter, the bureau shall provide a notice of the match if action  
 9 is to be initiated to block or encumber the account by establishing a  
 10 lien for child support payment to the:  
 11 (1) individual; and  
 12 (2) financial institution holding the account.  
 13 (f) The notice under section (e) must inform the individual that:  
 14 (1) the individual's account in a financial institution is subject to  
 15 a child support lien; and  
 16 (2) the individual may file an appeal with the bureau within  
 17 twenty (20) days after the date the notice was issued.  
 18 (g) The bureau shall hold a hearing under 470 IAC 1-4. The  
 19 department's final action following a hearing held under this subsection  
 20 is subject to judicial review as provided in 470 IAC 1-4.  
 21 (h) The state's lien on assets under this section is subordinate to any  
 22 prior lien perfected by:  
 23 (1) a financial institution; or  
 24 (2) another legitimate lien holder.  
 25 (i) A lien issued under this section remains in effect until the earliest  
 26 of:  
 27 (1) one hundred twenty (120) days after issuance;  
 28 (2) the date the asset on which the lien is issued is surrendered; or  
 29 (3) the date the lien is released by an action of the bureau.  
 30 (j) This section does not preclude a financial institution from  
 31 exercising its right to:  
 32 (1) charge back or recoup a deposit to an account; or  
 33 (2) set off from an account held by the financial institution in  
 34 which the noncustodial parent has an interest in any debts owed  
 35 to the financial institution that existed before:  
 36 (A) the state's lien; and  
 37 (B) notification to the financial institution of the child support  
 38 delinquency.  
 39 (k) A financial institution ordered to block or encumber an account  
 40 under this section is entitled to collect its normally scheduled account  
 41 activity fees to maintain the account during the period the account is  
 42 blocked or encumbered.

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1 (l) All information provided by a financial institution under this  
2 section is confidential and is available only to the bureau or its agents  
3 for use only in child support enforcement activities.

4 (m) A financial institution providing information required under this  
5 section is not liable for:

6 (1) disclosing the required information to the bureau, **the**  
7 **department of state revenue established by IC 6-8.1-2-1, or**  
8 **the department of workforce development established by**  
9 **IC 22-4.1-2-1;**

10 (2) blocking or surrendering any of an individual's assets in  
11 response to a lien imposed by:

12 (A) the bureau under this section; or

13 (B) a person or entity acting on behalf of the bureau; or

14 (3) any other action taken in good faith to comply with this  
15 section.

16 (n) The department shall pay a financial institution performing the  
17 data match required by this section a reasonable fee for providing the  
18 service that does not exceed the actual cost incurred by the financial  
19 institution.

20 (o) This section does not prevent the bureau or its agents from  
21 encumbering an obligor's account with a financial institution by any  
22 other remedy available for the enforcement of a child support order.

23 SECTION 17. IC 34-11-2-13 IS ADDED TO THE INDIANA  
24 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
25 [EFFECTIVE JULY 1, 2008]: **Sec. 13. (a) This section applies**  
26 **beginning January 1, 2009.**

27 **(b) An action brought by an aggrieved person under IC 22-2-14**  
28 **must be commenced not later than three (3) years after the final**  
29 **date of performing services to the contractor as provided in**  
30 **IC 22-2-14-21(b).**

31 SECTION 18. IC 34-30-2-16.8 IS ADDED TO THE INDIANA  
32 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
33 [EFFECTIVE UPON PASSAGE]: **Sec. 16.8. IC 6-8.1-8-8.7**  
34 **(Concerning actions taken to collect tax judgments and levies).**

35 SECTION 19. IC 34-30-2-86.7 IS ADDED TO THE INDIANA  
36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
37 [EFFECTIVE UPON PASSAGE]: **Sec. 86.7. IC 22-4-29-14**  
38 **(Concerning actions taken to collect unemployment insurance**  
39 **assessments.)**

40 SECTION 20. IC 34-30-2-87.3 IS ADDED TO THE INDIANA  
41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
42 [EFFECTIVE JULY 1, 2009]: **Sec. 87.3. IC 22-5-1.5-25 (Concerning**

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**certain employers that employ unauthorized aliens).**

SECTION 21. IC 34-55-10-2, AS AMENDED BY P.L.179-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.

(b) The amount of each exemption under subsection (c) applies until a rule is adopted by the department of financial institutions under section 2.5 of this chapter.

(c) The following property of a debtor domiciled in Indiana is exempt:

(1) Real estate or personal property constituting the personal or family residence of the debtor or a dependent of the debtor, or estates or rights in that real estate or personal property, of not more than fifteen thousand dollars (\$15,000). The exemption under this subdivision is individually available to joint debtors concerning property held by them as tenants by the entireties.

(2) Other real estate or tangible personal property of eight thousand dollars (\$8,000).

(3) Intangible personal property, including choses in action, deposit accounts, and cash (but excluding debts owing and income owing), of three hundred dollars (\$300).

(4) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(5) Any interest that the debtor has in real estate held as a tenant by the entireties. The exemption under this subdivision does not apply to a debt for which the debtor and the debtor's spouse are jointly liable.

(6) An interest, whether vested or not, that the debtor has in a retirement plan or fund to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan or fund by or on behalf of the debtor or the debtor's spouse:

(i) which were not subject to federal income taxation to the debtor at the time of the contribution; or

(ii) which are made to an individual retirement account in the manner prescribed by Section 408A of the Internal Revenue Code of 1986;

(B) earnings on contributions made under clause (A) that are not subject to federal income taxation at the time of the levy; and

(C) roll-overs of contributions made under clause (A) that are not subject to federal income taxation at the time of the levy.

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1 (7) Money that is in a medical care savings account established  
 2 under IC 6-8-11.  
 3 **(8) Money that is in a health savings account established**  
 4 **under Section 223 of the Internal Revenue Code of 1986.**  
 5 ~~(8)~~ (9) Any interest the debtor has in a qualified tuition program,  
 6 as defined in Section 529(b) of the Internal Revenue Code of  
 7 1986, but only to the extent funds in the program are not  
 8 attributable to:  
 9 (A) excess contributions, as described in Section 529(b)(6) of  
 10 the Internal Revenue Code of 1986, and earnings on the excess  
 11 contributions;  
 12 (B) contributions made by the debtor within one (1) year  
 13 before the date of the levy or the date a bankruptcy petition is  
 14 filed by or against the debtor, and earnings on the  
 15 contributions; or  
 16 (C) the excess over five thousand dollars (\$5,000) of aggregate  
 17 contributions made by the debtor for all programs under this  
 18 subdivision and education savings accounts under subdivision  
 19 (9) having the same designated beneficiary:  
 20 (i) not later than one (1) year before; and  
 21 (ii) not earlier than two (2) years before;  
 22 the date of the levy or the date a bankruptcy petition is filed by  
 23 or against the debtor, and earnings on the aggregate  
 24 contributions.  
 25 ~~(9)~~ (10) Any interest the debtor has in an education savings  
 26 account, as defined in Section 530(b) of the Internal Revenue  
 27 Code of 1986, but only to the extent funds in the account are not  
 28 attributable to:  
 29 (A) excess contributions, as described in Section 4973(e) of  
 30 the Internal Revenue Code of 1986, and earnings on the excess  
 31 contributions;  
 32 (B) contributions made by the debtor within one (1) year  
 33 before the date of the levy or the date a bankruptcy petition is  
 34 filed by or against the debtor, and earnings on the  
 35 contributions; or  
 36 (C) the excess over five thousand dollars (\$5,000) of aggregate  
 37 contributions made by the debtor for all accounts under this  
 38 subdivision and qualified tuition programs under subdivision  
 39 (8) having the same designated beneficiary:  
 40 (i) not later than one (1) year before; and  
 41 (ii) not earlier than two (2) years before;  
 42 the date of the levy or the date a bankruptcy petition is filed by

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1 or against the debtor, and earnings on the excess contributions.  
2 ~~(+0)~~ (11) The debtor's interest in a refund or a credit received or  
3 to be received under section 32 of the Internal Revenue Code of  
4 1986.

5 (d) A bankruptcy proceeding that results in the ownership by the  
6 bankruptcy estate of a debtor's interest in property held in a tenancy by  
7 the entireties does not result in a severance of the tenancy by the  
8 entireties.

9 (e) Real estate or personal property upon which a debtor has  
10 voluntarily granted a lien is not, to the extent of the balance due on the  
11 debt secured by the lien:

- 12 (1) subject to this chapter; or
- 13 (2) exempt from levy or sale on execution or any other final  
14 process from a court.

15 SECTION 22. [EFFECTIVE JULY 1, 2009] **The department of  
16 labor may initiate an administrative proceeding against an  
17 employer under IC 22-5-1.5-15, as added by this act, only for a  
18 violation of IC 22-5-1.5-11, as added by this act, that occurs after  
19 June 30, 2009.**

20 SECTION 23. [EFFECTIVE JULY 1, 2008] (a) **The attorney  
21 general may request funding to implement IC 22-5-1.5-12, as added  
22 by this act, in the next biennial budget submission.**

23 (b) **This SECTION expires July 1, 2012.**

24 SECTION 24. [EFFECTIVE JULY 1, 2008] (a) **As used in this  
25 SECTION, "law enforcement officer" has the meaning set forth in  
26 IC 10-11-2-21.5, as added by this act.**

27 (b) **There is appropriated to the state police department one  
28 million dollars (\$1,000,000) from the state general fund for the  
29 state police department's use in training law enforcement officers  
30 under a memorandum of understanding entered into under  
31 IC 10-11-2-21.5, as added by this act.**

32 (c) **Money appropriated by this SECTION does not revert to the  
33 state general fund at the close of any fiscal year, but remains  
34 available for the use of the state police department until the  
35 provisions of IC 10-11-2-21.5, as added by this act, are fulfilled.**

36 SECTION 25. [EFFECTIVE JULY 1, 2008] (a) **The definitions in  
37 IC 22-5-1.5, as added by this act, apply throughout this SECTION.**

38 (b) **There is appropriated to the attorney general five hundred  
39 thousand dollars (\$500,000) from the state general fund for the  
40 attorney general's use in investigating complaints filed with the  
41 attorney general under IC 22-5-1.5-12, as added by this act, that an  
42 employer knowingly employed an unauthorized alien in violation**

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of IC 22-5-1.5-11, as added by this act.

(c) Money appropriated by this SECTION does not revert to the state general fund at the close of any fiscal year, but remains available for use by the attorney general until the provisions of IC 22-5-1.5, as added by this act, are fulfilled.

SECTION 26. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the commission on Hispanic/Latino affairs established by IC 4-23-28-2.

(b) The commission shall study and prepare a report on:

- (1) the requirements a person must meet to qualify for naturalization; and
- (2) the process by which United States citizenship is conferred upon a person.

(c) The commission shall submit the report prepared in accordance with subsection (b) to the legislative council in an electronic format under IC 5-14-6 before July 1, 2009.

(d) There is appropriated to the commission fifty thousand dollars (\$50,000) from the state general fund for the commission's use in studying and preparing a report on the topics listed in subsection (b). Any amount of the appropriated funds under this subsection that is not used or encumbered reverts to the state general fund after June 30, 2009.

(e) This SECTION expires January 1, 2010.

SECTION 27. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the commission established under subsection (b).

(b) The immigration cost impact commission is established.

(c) The commission consists of the following members:

- (1) The executive director of the department of homeland security or the director's designee.
- (2) The commissioner of the department of labor or the commissioner's designee.
- (3) The chairperson of the commission on Hispanic/Latino affairs established by IC 4-23-28-2 or the chairperson's designee who is a member of the commission on Hispanic/Latino affairs.
- (4) The secretary of family and social services or the secretary's designee.
- (5) The state superintendent of public instruction or the state superintendent's designee.
- (6) The commissioner of the department of correction or the commissioner's designee.

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1 (7) A representative of the business community.

2 (8) A representative of organized labor.

3 (9) A representative of hospital associations.

4 (10) Two (2) members of the senate, who may not be affiliated  
5 with the same political party, to be appointed by the president  
6 pro tempore of the senate.

7 (11) Two (2) members of the house of representatives, who  
8 may not be affiliated with the same political party, to be  
9 appointed by the speaker of the house of representatives.

10 The governor shall appoint the members designated by  
11 subdivisions (7) through (9).

12 (d) The members of the commission shall select one (1) of the  
13 appointed members to serve as chairperson and one (1) of the  
14 appointed members to serve as vice chairperson.

15 (e) The commission shall meet at the call of the chairperson. The  
16 commission shall meet at least one (1) time quarterly.

17 (f) The affirmative votes of a majority of the voting members  
18 appointed to the commission are required by the commission to  
19 take action on any measure, including a final report.

20 (g) Each member of the commission who is not a state employee  
21 is entitled to the minimum salary per diem provided by  
22 IC 4-10-11-2.1(b). The member is also entitled to reimbursement  
23 for traveling expenses as provided under IC 4-13-1-4 and other  
24 expenses actually incurred in connection with the member's duties  
25 as provided in the state policies and procedures established by the  
26 Indiana department of administration and approved by the budget  
27 agency.

28 (h) Each member of the commission who is a state employee is  
29 entitled to reimbursement for traveling expenses as provided under  
30 IC 4-13-1-4 and other expenses actually incurred in connection  
31 with the member's duties as provided in the state policies and  
32 procedures established by the Indiana department of  
33 administration and approved by the budget agency.

34 (i) The commission shall study and prepare a report on the  
35 following:

36 (1) The financial impact of individuals who are unlawfully  
37 present in the United States on the following in Indiana:

38 (A) Education.

39 (B) Health care.

40 (C) The criminal justice system, including court and  
41 attorney costs and costs of incarceration.

42 (D) Welfare.

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- 1           **(2) The impact of individuals who are unlawfully present in**
- 2           **the United States on the following in Indiana:**
- 3           **(A) Wages.**
- 4           **(B) State and local agencies and offices that issue or are**
- 5           **required to check identification.**
- 6           **(3) Issues related to the following:**
- 7           **(A) The state's authority and responsibility concerning a**
- 8           **child who:**
- 9           **(i) is a United States citizen; and**
- 10           **(ii) has a parent who was or both parents who were**
- 11           **deported for violation of immigration laws.**
- 12           **(B) The societal and familial impact of deportation of a**
- 13           **family member.**
- 14           **(j) The commission shall submit the report prepared in**
- 15           **accordance with subsection (i) to the legislative council in an**
- 16           **electronic format under IC 5-14-6 before July 1, 2009.**
- 17           **(k) There is appropriated to the commission fifty thousand**
- 18           **dollars (\$50,000) from the state general fund for the commission's**
- 19           **use in studying and preparing a report on the topics listed in**
- 20           **subsection (i). Any amount of the appropriated funds under this**
- 21           **subsection that is not used or encumbered reverts to the state**
- 22           **general fund after June 30, 2009.**
- 23           **(l) This SECTION expires January 1, 2010.**
- 24           **SECTION 28. An emergency is declared for this act.**

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SENATE MOTION

Madam President: I move that Senator Weatherwax be removed as second author of Senate Bill 345.

WEATHERWAX

SENATE MOTION

Madam President: I move that Senator Jackman be removed as author of Senate Bill 345 and that Senator Weatherwax be substituted therefor.

JACKMAN

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 345, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 2. IC 22-2-5-0.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.8. As used in this chapter, "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.**

SECTION 3. IC 22-2-5-1, AS AMENDED BY P.L.51-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana (**collectively, the "employer"**) shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. **In addition, an employer and an employee may agree to any other pay period, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.** The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. ~~Any contract in violation of this subsection is void.~~

(b) Payment shall be made for all wages earned ~~to in a date pay period~~ not more than ten (10) business days ~~prior to the date of~~

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payment. However, this subsection does not prevent payments being made at shorter intervals than specified in this subsection; nor repeat any law providing for payments at shorter intervals: **following the close of the pay period, unless an employer and an employee agree to a different payment date, including an agreement to defer compensation that satisfies the requirements of Section 409A of the Internal Revenue Code.** However, if an employee voluntarily leaves employment, either permanently or temporarily, the employer shall not be required to pay the employee an amount due the employee until the next usual and regular day for payment of wages, as established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

- (1) ten (10) business days have elapsed after the employee has made a demand for the wages due the employee; or
- (2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 345 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 345 be amended to read as follows:

Page 3, delete lines 24 through 42.

Page 4, delete lines 1 through 18.

Renumber all SECTIONS consecutively.

(Reference is to SB 345 as printed January 25, 2008.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 345, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

SUMMERS, Chair

Committee Vote: yeas 8, nays 0.

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 HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 345 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-8.1-3-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 21. (a) This section applies after December 31, 2008.**

**(b) The department shall cooperate with the:**

- (1) department of labor created by IC 22-1-1-1;**
- (2) worker's compensation board of Indiana created by IC 22-3-1-1(a); and**
- (3) department of workforce development established by IC 22-4.1-2-1;**

**by sharing information concerning any suspected misclassification by a contractor (as defined in IC 22-2-14-5) of an employee as an independent contractor. Information shared pursuant to this section is confidential and may not be published or open to public inspection.**

Page 3, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 3. IC 6-8.1-9-14, AS AMENDED BY P.L.103-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 14. (a) Except as provided in subsection (n), the department shall establish, administer, and make available a centralized debt collection program for use by state agencies to collect delinquent accounts, charges, fees, loans, taxes, civil penalties under IC 22-2-14-13, or other indebtedness owed to or being collected by state agencies. The department's collection facilities shall be available for use by other state agencies only when resources are available to the department.**

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(b) The commissioner shall prescribe the appropriate form and manner in which collection information is to be submitted to the department.

(c) The debt must be delinquent and not subject to litigation, claim, appeal, or review under the appropriate remedies of a state agency.

(d) The department has the authority to collect for the state or claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or claimant agency that has a formal agreement with the department for central debt collection.

(e) The formal agreement must provide that the information provided to the department be sufficient to establish the obligation in court and to render the agreement as a legal judgment on behalf of the state. After transferring a file for collection to the department for collection, the claimant agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of a file for collection, the department shall comply with all applicable state and federal laws governing collection of the debt.

(f) The department may use a claimant agency's statutory authority to collect the claimant agency's delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to the claimant agency.

(g) The department's right to credit against taxes due may not be impaired by any right granted the department or other state agency under this section.

(h) The department of state revenue may charge the claimant agency a fee not to exceed fifteen percent (15%) of any funds the department collects for a claimant agency. Notwithstanding any law concerning delinquent accounts, charges, fees, loans, taxes, or other indebtedness, the fifteen percent (15%) fee shall be added to the amount due to the state or claimant agency when the collection is made.

(i) Fees collected under subsection (h) shall be retained by the department after the debt is collected for the claimant agency and are appropriated to the department for use by the department in administering this section.

(j) The department shall transfer any funds collected from a debtor to the claimant agency within thirty (30) days after the end of the month in which the funds were collected.

(k) When a claimant agency requests collection by the department, the claimant agency shall provide the department with:

- (1) the full name;
- (2) the Social Security number or federal identification number, or both;

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- (3) the last known mailing address; and
- (4) additional information that the department may request; concerning the debtor.

(l) The department shall establish a minimum amount that the department will attempt to collect for the claimant agency.

(m) The commissioner shall report, not later than March 1 for the previous calendar year, to the governor, the budget director, and the legislative council concerning the implementation of the centralized debt collection program, the number of debts, the dollar amounts of debts collected, and an estimate of the future costs and benefits that may be associated with the collection program. A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(n) The department may not assess a fee to a state agency or a custodial parent for seeking a setoff to a state or federal income tax refund for past due child support.

SECTION 4. IC 22-1-1-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 23. The department of labor shall cooperate with the:**

- (1) department of workforce development established by IC 22-4.1-2-1;
- (2) department of state revenue established by IC 6-8.1-2-1; and
- (3) worker's compensation board of Indiana created by IC 22-3-1-1(a);

**by sharing information concerning any suspected misclassification by a contractor (as defined in IC 22-2-14-5) of an employee as an independent contractor. Information shared pursuant to this section is confidential and may not be published or open to public inspection.**

SECTION 5. IC 22-2-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**Chapter 14. Employee Classification Act**

**Sec. 1. This chapter applies after December 31, 2008.**

**Sec. 2. This chapter is intended to address the practice of misclassifying employees as independent contractors.**

**Sec. 3. As used in this chapter, "agent of the contractor" means:**

- (1) an individual having management authority or enforcement powers with respect to a practice or policy of the contractor regarding the classification of an employee;
- (2) a corporate officer; or

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**(3) a member of the board of directors;  
of the contractor.**

**Sec. 4. As used in this chapter, "construction" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, airport facility, highway, roadway, street, bridge, alley, bridge, sewer, drain, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation, or other project, development, real property or improvement, or doing any part of these actions. It is immaterial whether or not the performance of the work described involves the addition of any material or article of merchandise to, or fabrication into, a structure, project, development, real property, or improvement described in this section. The term includes moving construction related materials to or from the job site.**

**Sec. 5. As used in this chapter, "contractor" means any sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity that engages in construction authorized by law to do business within Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.**

**Sec. 6. As used in this chapter, "department" means the department of labor created by IC 22-1-1-1. The term includes the commissioner, employees of the department, and agents authorized by the commissioner to act on behalf of the department.**

**Sec. 7. As used in this chapter, "interested party" means a person with an interest in compliance with this chapter. The term does not require that a person be aggrieved in order to be considered an interested party.**

**Sec. 8. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.**

**Sec. 9. As used in this chapter, "performing services" means performing construction services.**

**Sec. 10. As used in this chapter, "public work" includes any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water works, parking facility, railroad, excavation, or other project, development, real property, or improvement that is paid for in whole or in part out of public funds or a special assessment.**

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The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

Sec. 11. (a) An individual performing services for a contractor is considered to be an employee of the contractor unless:

(1) the:

(A) individual has been and will continue to be free from control or direction over the performance of the service for the contractor, both under the individual's contract of service and in fact; and

(B) individual is engaged in an independently established trade, occupation, profession, or business;

(2) the individual is determined to be a legitimate sole proprietor or partnership because:

(A) the sole proprietor or partnership is performing the service without substantial direction and control as to the means and manner of providing the services, subject only to the right of the contractor, for whom the service is provided, to specify the desired result;

(B) the sole proprietor or partnership has a substantial investment of capital in the sole proprietorship;

(C) the sole proprietor or partnership owns the capital goods, gains the profits, and bears the losses of the sole proprietorship or partnership;

(D) the sole proprietor or partnership makes its services available to the general public or the business community on a continuing basis;

(E) the sole proprietor or partnership includes services rendered on a federal income tax schedule as an independent business or profession;

(F) the sole proprietor or partnership performs services for the contractor under the sole proprietor's or partnership's name and the contractor pays the sole proprietor or partnership a flat fee or other agreed amount of compensation that is not based on an established rate for any time period of work;

(G) the sole proprietor or partnership obtains and pays for the license or permit in the sole proprietor's or partnership's name when the services being provided require a license or permit;

(H) the sole proprietor or partnership furnishes the tools and equipment necessary to provide the service;

(I) if necessary, the sole proprietor or partnership hires its

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own employees, pays the employees without reimbursement from the contractor, and reports the employees' income to the Internal Revenue Service;

(J) the contractor does not:

(i) represent the sole proprietor or partnership as an employee of the contractor to its customers; or

(ii) reimburse the sole proprietor or partnership for its business expenses;

(K) the sole proprietor or partnership has the right to choose to perform similar services for others; and

(L) the sole proprietorship or partnership has a written agreement with the contractor describing the intended business relationship;

(3) the individual is an owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor carrier; or

(4) the individual provides professional services to construction projects, including a realtor, a decorator, a project developer, a surveyor, or an office employee.

(b) A sole proprietor or partnership that is performing services for a contractor as a subcontractor and does not meet the requirements of subsection (a)(2) is considered an individual for purposes of this chapter.

(c) In determining whether a contractor properly classifies an individual as an employee, the department shall consider whether the contractor does the following on behalf of the individual:

(1) Withholds, reports, and remits payroll taxes.

(2) Pays contributions to the unemployment insurance benefit fund established by IC 22-4-26-1.

(3) Maintains worker's compensation insurance as required by IC 22-3-5.

(4) Pays one and one-half (1 1/2) times the regular hourly rate of wages for hours worked in excess of forty (40) hours in a workweek.

(d) A contractor shall maintain records for a period of not less than three (3) years for an individual performing services for the contractor, regardless of whether the individual is classified as:

(1) an employee;

(2) an independent contractor;

(3) a sole proprietor; or

(4) a partnership.

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(e) Records to be maintained by the contractor must include all documents related to, or tending to establish the nature of, the relationship between the contractor and an individual performing services for the contractor. Records that must be maintained for an individual performing services for the contractor include, but are not limited to:

- (1) the:
  - (A) name;
  - (B) address;
  - (C) phone number; and
  - (D) Social Security number, individual taxpayer identification number, or federal tax identification number;
- (2) the type of work performed;
- (3) all invoices, billing statements, payroll records, or other payment records, including the dates of payments, and any miscellaneous income paid or deductions made;
- (4) copies of all contracts with the individual, agreements with the individual, applications for employment by the individual with the contractor; and
- (5) any federal and state tax documents.

Sec. 12. (a) It is a violation of section 11(a) of this chapter for a contractor or an agent of a contractor to fail to properly classify an individual as an employee unless the relationship between the individual and the contractor is excluded under section 11(a) of this chapter.

(b) A contractor is not liable under this chapter for the failure of a subcontractor or a lower tiered subcontractor to properly classify persons performing services as employees.

Sec. 13. (a) A contractor or an agent of the contractor that violates this chapter is subject to a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation found by the first audit or investigation performed by the department. After a second or subsequent audit or investigation, a contractor or an agent of the contractor is subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each repeat violation found by the department within a five (5) year period after the first violation. For purposes of this section, each violation of this chapter for each person and for each day the violation continues shall constitute a separate and distinct violation.

(b) The department shall consider the appropriateness of the amount of a penalty to the contractor or agent of the contractor

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charged upon the determination of the gravity of the violation.

(c) The department may assess up to twice the civil penalty under subsection (a) against a contractor or an agent of a contractor that:

- (1) intentionally violates this chapter; or
- (2) obstructs the department during an inspection of a place of employment during an investigation authorized under section 17(a) of this chapter concerning this chapter.

The amount of the penalty determined may be recovered, if necessary, in a civil action brought by the attorney general on behalf of the department. Any uncollected amount under this subsection or subsection (a) is subject to IC 6-8.1-9-14.

Sec. 14. (a) The department shall post a summary of the requirements of this chapter on its official Internet web site.

(b) The department also shall maintain the list set forth in section 18(e) of this chapter concerning contractors that are barred from performing public works contracts.

Sec. 15. A contractor for which one (1) or more individuals perform services who are not classified as employees under section 11(a) of this chapter shall post and keep posted a notice, prepared by the department, summarizing the requirements of this chapter. The notice shall be posted in a conspicuous place on a job site where the individual performs services and in each of the offices of the contractor. The department shall furnish copies of summaries without charge to a contractor upon request.

Sec. 16. (a) An interested party may file a complaint with the department against a contractor or an agent of the contractor if the interested party has a reasonable belief that the contractor or the agent of the contractor is in violation of this chapter. The complaint shall be filed on a form to be supplied by the department and in a manner prescribed by the department. The department may not investigate a complaint for a violation alleged to have occurred before January 1, 2009.

(b) The department shall conduct an investigation to ascertain the facts relating to the violation alleged in the complaint and determine whether a violation under this chapter has occurred. The investigation may be made by written or oral inquiry, field visit, conference, or any method or combination of methods the department considers suitable. The following apply to the investigation:

- (1) If a contractor refuses to cooperate, the department may make a finding that there is a violation of this chapter.

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(2) Complainants must provide the department with a notice of a change of address or telephone number or a prolonged absence from the current address so that the department can fully investigate the complaint. A complainant shall cooperate with the department, provide necessary information, and be available for interviews and conferences upon reasonable notice or request by the department. If a complainant cannot be located or does not respond to reasonable requests by the department, the department may dismiss the individual from the complaint.

(3) The department may investigate alleged violations not longer than three (3) years preceding the date the complaint was filed.

(4) Before making a final determination of a violation, the department shall notify the contractor of the substance of the department's investigation and afford the contractor an opportunity to present any written information within fifteen (15) calendar days for the department to consider in reaching its final determination.

(c) As part of its investigation, the department may convene a factfinding conference in person or by telephone to obtain additional information or evidence, identify the issues in dispute, ascertain the positions of the parties, and explore the possibility of settlement. The factfinding conference must be limited to those issues the department believes to be relevant. The following apply to the conference:

(1) Notice of the conference shall:

(A) be given to all parties at least ten (10) calendar days before the conference; and

(B) identify the individual requested to attend on behalf of each party.

(2) A party may be accompanied to a factfinding conference by:

(A) the party's attorney or other representative; and

(B) a translator if necessary.

(3) A departmental investigator shall conduct the conference and control the proceedings. No tape recording, stenographic report, or other verbatim record of the conference may be made. If an individual fails to cooperate at the conference and becomes so disruptive or abusive that a full and fair conference cannot be conducted, the departmental investigator shall exclude the individual from the conference.

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**(4) A complainant who fails to attend a factfinding conference may be dismissed from the complaint. If a contractor fails to attend a factfinding conference, the department may make a finding that there is a violation of this chapter.**

**Sec. 17. (a) The department:**

- (1) may conduct investigations in connection with the administration and enforcement of this chapter;**
- (2) shall enforce the provisions of this chapter; and**
- (3) may hire investigators and other personnel necessary to carry out the purpose of this chapter.**

**(b) An employee of the department has authority to visit and inspect, at all reasonable times, a worksite subject to the provisions of this chapter and has authority to inspect, at all reasonable times, documents related to the determination of whether an individual is an employee under section 11(a) of this chapter.**

**(c) The commissioner or a representative of the commissioner may:**

- (1) compel, by subpoena, the attendance and testimony of witnesses and the production of books, payrolls, records, papers, and other evidence in an investigation; and**
- (2) administer oaths to witnesses.**

**Sec. 18. (a) Whenever the department believes, after investigation, that a violation of this chapter has occurred, the department may:**

- (1) issue and cause to be served on a person an order to cease and desist from further violation of the chapter;**
- (2) take affirmative or other action considered reasonable to eliminate the effect of the violation;**
- (3) collect the amount of wages, salary, employment benefits, or other compensation denied or lost to an individual; or**
- (4) assess a civil penalty allowed under section 13 of this chapter.**

**A civil penalty assessed by the department and any other relief requested by the department is recoverable in an action brought by the attorney general.**

**(b) When it appears to the department that a contractor or an agent of the contractor has violated a valid order of the department issued under this chapter, the department may:**

- (1) commence an action through the attorney general; and**
- (2) seek an order from the superior or circuit court in the county in which the contractor does business, mandating the contractor or the agent of the contractor to obey the order of**

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the department.

The failure of the contractor or the agent of the contractor to obey the order of the court is contempt of court.

(c) Whenever the department determines that a violation of this chapter has occurred, the department shall notify the contractor or agent of the contractor in writing of the violation. A contractor or an agent of a contractor that receives:

- (1) an order based on a violation;
- (2) a civil penalty assessment;
- (3) a cease and desist order; or
- (4) any combination of subdivisions (1) through (3);

from the department may seek a hearing on the determination by filing a written petition for review with the department within ten (10) business days after receipt of the determination and in accordance with IC 4-21.5-3-2. The petition for review must contain a statement of the basis for the contest. The department shall mail a copy of the petition for review to the complainant and to any interested party designated on the complaint. The contractor shall post a copy of the petition for review contemporaneously with the filing of the petition at or near the place where the alleged violation occurred, or if the contractor is no longer performing services at the place where the alleged violation occurred, at the contractor's principal place of business in a conspicuous place where labor notices regularly are posted. Further, the contractor shall post a bond in an amount sufficient to pay wages, salary, employment benefits, or other compensation lost or denied to the individual as determined by the department and civil penalties assessed by the department contemporaneously with the filing of the petition. If the contractor or an agent of the contractor does not file a petition for review and post a bond within the ten (10) business day period, the department's determination shall be final.

(d) If the contractor or agent of the contractor files a timely petition for review, the commissioner shall set a hearing on the alleged violation. The hearing must take place not more than forty-five (45) calendar days after the receipt of the request for the hearing by the department. The hearing must be held in accordance with IC 4-21.5.

(e) After the second or subsequent violation determined by the department that occurs within five (5) years of an earlier violation, the department shall place the contractor's name on a list maintained on the Internet web site of the department as required

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under section 14(b) of this chapter. A contract for a public work may not be awarded by the state or a political subdivision to:

- (1) a contractor whose name appears on the list; or
- (2) a firm, a corporation, a partnership, or an association in which the contractor has an interest;

until four (4) years have elapsed after the posting of the name on the list. If a contractor or agent of the contractor files a timely petition for review as set forth under subsection (c), the contractor's name shall not be added to the list until the department's determination that the contractor or agent of the contractor has violated this chapter is final.

Sec. 19. (a) The employee classification fund is established to:

- (1) administer this chapter;
- (2) investigate contractors and agents of contractors; and
- (3) fund other expenses incurred in carrying out the duties of the department under this chapter.

The fund consists of civil penalties collected by the department under this chapter. The fund shall be administered by the department.

(b) The expenses of administering the fund shall be paid from money in 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. The interest that accrues from these investments shall be deposited in the fund.

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

Sec. 20. (a) It is a violation of this chapter for a contractor or an agent of a contractor to retaliate through discharge or in any other manner against a person for exercising a right granted under this chapter. Retaliation subjects a contractor or an agent of a contractor to civil penalties under section 13 of this chapter or a private cause of action, or both.

(b) It is a violation of this chapter for a contractor or an agent of a contractor to retaliate against a person for:

- (1) making a complaint to a contractor or an agent of a contractor, to a coworker, to a community organization, to a state or federal agency, or within a public hearing that rights guaranteed under this chapter have been violated;
- (2) causing a proceeding under or related to this chapter to be instituted; or
- (3) testifying or preparing to testify in an investigation or

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proceeding under this chapter.

**Sec. 21. (a) A person aggrieved by a contractor or an agent of a contractor for a violation of this chapter may file suit in circuit court in the county where the alleged offense occurred or where any person who is a party to the action resides, without regard to exhaustion of any alternative administrative remedies provided in this chapter. A person whose rights have been violated under this chapter by a contractor or an agent of a contractor is entitled to collect:**

- (1) the amount of any wages, salary, employment benefits, or other compensation denied or lost to the person because of the violation;**
- (2) any other compensatory damages;**
- (3) in the case of an intentional violation, punitive damages in an amount equal to the civil penalties assessed under section 13(c) of this chapter;**
- (4) in the case of unlawful retaliation as set forth in section 20 of this chapter, all legal or equitable relief, or both, as appropriate; and**
- (5) attorney's fees and costs.**

**(b) The right of an interested party or aggrieved person to bring an action under this chapter terminates three (3) years after the final date of performing services for the contractor by the affected employee. The period of limitation is tolled if the contractor or an agent of the contractor has deterred a person's exercise of rights under this chapter.**

**Sec. 22. A person may not waive any provision of this chapter.**

**Sec. 23. A finding made under this chapter:**

- (1) is for the purpose of enforcing this chapter; and**
- (2) is not admissible or binding against a party in another proceeding.**

**Sec. 24. The department, the department of workforce development established by IC 22-4.1-2-1, the department of state revenue established by IC 6-8.1-2-1, and the worker's compensation board of Indiana created by IC 22-3-1-1(a) shall cooperate under this chapter by sharing information concerning any suspected misclassification of an employee as an independent contractor by a contractor or an agent of a contractor. Upon determining that a contractor or an agent of a contractor has classified an employee as an independent contractor in violation of this chapter, the department shall notify the:**

- (1) department of workforce development, which shall check**

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**the contractor's compliance with laws under IC 22-4 and IC 22-4.1;**

**(2) the department of state revenue, which shall check the contractor's compliance with laws under IC 6; and**

**(3) the worker's compensation board of Indiana, which shall check the contractor's compliance with laws under IC 22-3.**

SECTION 6. IC 22-3-1-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 5. (a) This section applies after December 31, 2008.**

**(b) The worker's compensation board of Indiana shall cooperate with the:**

**(1) department of state revenue established by IC 6-8.1-2-1;**

**(2) department of labor created by IC 22-1-1-1; and**

**(3) department of workforce development established by IC 22-4.1-2-1;**

**by sharing information concerning any suspected misclassification by a contractor (as defined in IC 22-2-14-5) of an employee as an independent contractor. Information shared pursuant to this section is confidential and may not be published or open to public inspection.**

SECTION 7. IC 22-4-18-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 8. (a) This section applies after December 31, 2008.**

**(b) The department of workforce development shall cooperate with the:**

**(1) department of labor created by IC 22-1-1-1;**

**(2) department of state revenue established by IC 6-8.1-2-1; and**

**(3) worker's compensation board of Indiana created by IC 22-3-1-1(a);**

**by sharing information concerning any suspected misclassification by a contractor (as defined in IC 22-2-14-5) of an employee as an independent contractor. Information shared pursuant to this section is confidential and may not be published or open to public inspection."**

Page 8, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 11. IC 34-11-2-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 13. (a) This section applies beginning January 1, 2009.**

**(b) An action brought by an aggrieved person under IC 22-2-14 must be commenced not later than three (3) years after the final**

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date of performing services to the contractor as provided in IC 22-2-14-21(b)."

Renumber all SECTIONS consecutively.

(Reference is to ESB 345 as printed February 15, 2008.)

NIEZGODSKI

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 345 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety and to make an appropriation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**Chapter 18. Citizenship and Immigration Status Information**

**Sec. 1. As used in this chapter, "governmental body" has the meaning set forth in IC 5-22-2-13.**

**Sec. 2. A governmental body may not enact an ordinance, a resolution, a rule, or a policy that prohibits or in any way restricts another governmental body, including a law enforcement officer (as defined in IC 5-2-1-2), a state or local official, or a state or local government employee, from taking the following actions with regard to information concerning the citizenship or immigration status, lawful or unlawful, of an individual:**

- (1) Communicating or cooperating with federal officials.**
- (2) Sending to or receiving information from the United States Department of Homeland Security.**
- (3) Maintaining information.**
- (4) Exchanging information with another federal, state, or local government entity.**

**Sec. 3. If a governmental body violates this chapter, a person lawfully domiciled in Indiana may bring an action to compel the governmental body to comply with this chapter."**

Page 3, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 3. IC 10-11-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2008]: **Sec. 21.5. (a) As used in this section, "law enforcement officer" means a:**

- (1) police employee;**
- (2) county sheriff;**
- (3) county police officer;**
- (4) county police reserve officer;**
- (5) city police officer;**
- (6) city police reserve officer;**
- (7) town marshal;**
- (8) deputy town marshal; or**
- (9) member of a consolidated law enforcement department established under IC 36-3-1-5.1.**

**(b) The superintendent shall negotiate the terms of a memorandum of understanding between the state and the United States Department of Justice or the United States Department of Homeland Security concerning a pilot project for the enforcement of federal immigration and customs laws in Indiana.**

**(c) The memorandum of understanding described in subsection (b) must be signed on behalf of the state by the superintendent and governor, unless otherwise required by the United States Department of Justice or the United States Department of Homeland Security.**

**(d) The superintendent shall designate appropriate law enforcement officers to be trained under the memorandum of understanding described in subsection (b).**

**(e) The department shall apply for federal funding, as available, for the costs associated with training law enforcement officers under the memorandum of understanding described in subsection (b).**

**(f) A law enforcement officer certified as trained in accordance with the memorandum of understanding described in subsection (b) may enforce federal immigration and customs laws while performing within the scope of the law enforcement officer's duties.**

**(g) The superintendent shall coordinate efforts, as needed, with the executive director of the department of homeland security to address issues of national security in implementing this section.**

**SECTION 4. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. (a) The department of labor shall employ a sufficient number of administrative law judges to hear and decide cases initiated by the department under IC 22-5-1.5.**

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**(b) An administrative law judge employed by the department is subject to IC 4-21.5.**

SECTION 5. IC 22-4-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. **(a) As used in this section, "SAVE program" means the Systematic Alien Verification of 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 ~~his~~ **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 lawful presence of the individual to determine the individual's eligibility for benefits through the SAVE program. The department shall implement this subsection in accordance with federal law."**

Page 6, between lines 3 and 4, begin a new paragraph and insert:  
"SECTION 8. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE

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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 1.5. Employment of Unauthorized Aliens**

**Sec. 1. (a) This chapter applies only to an employee that an employer hires after June 30, 2009.**

**(b) Except as provided in subsection (c), this chapter does not apply to the following:**

- (1) A public utility (as defined in IC 8-1-2-1(a)) that is subject to regulation by the Indiana utility regulatory commission under IC 8-1-2.**
- (2) A hospital licensed under IC 16-21.**
- (3) A private psychiatric institution licensed under IC 12-25.**
- (4) A community mental health center identified in IC 12-29-2-1.**
- (5) A nonprofit corporation.**
- (6) A person who operates a business of transporting emergency patients by ambulance or using a nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5).**
- (7) A corporation organized under IC 8-1-13.**
- (8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.**
- (9) A municipally owned utility (as defined in IC 8-1-2-1(h)).**

**(c) The entities listed in subsection (b) are subject to section 29 of this chapter.**

**Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.**

**Sec. 3. As used in this chapter, "department" refers to the department of labor.**

**Sec. 4. As used in this chapter, "employee" means an individual who:**

- (1) performs services for an employer; and**
- (2) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(l).**

**Sec. 5. (a) As used in this chapter, "employer" means a person that:**

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- (1) transacts business in Indiana;
- (2) has a license issued by an agency; and
- (3) employs one (1) or more individuals who perform employment services in Indiana.

However, if the person for whom the employee performs or performed the services does not have control of the payment of the wages for the services, the term "employer" means the person having control of the payment of wages to the employee.

(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

Sec. 6. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2.

Sec. 7. (a) As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

- (1) required by law; and
- (2) issued by an agency;

for purposes of operating a business in Indiana.

(b) The term does not include an occupational or a professional license.

Sec. 8. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

Sec. 9. As used in this chapter, "pilot program" means the employment verification pilot program administered by the United States Department of Homeland Security and the Social Security Administration, or the successor of that program.

Sec. 10. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 11. An employer shall not knowingly employ an unauthorized alien.

Sec. 12. (a) The attorney general may investigate a complaint filed with the attorney general that an employer knowingly employed an unauthorized alien in violation of section 11 of this chapter.

(b) In investigating a complaint under subsection (a), the attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government under 8 U.S.C. 1373(c).

(c) A complaint filed with the attorney general under subsection (a) must be:

- (1) in writing; and

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(2) signed by the individual filing the complaint.

Sec. 13. A state, county, or local official or employee may not attempt to make independently a final determination as to whether an individual is authorized to work in the United States.

Sec. 14. (a) If, after an investigation, the attorney general determines that an employer has knowingly employed an unauthorized alien, the attorney general shall notify the United States Immigration and Customs Enforcement.

(b) If the attorney general determines that an employer has knowingly employed an unauthorized alien and that any defenses to knowingly employing an unauthorized alien established under this chapter do not apply, the attorney general may notify the department.

(c) The attorney general may not notify the department under subsection (b) about an unauthorized alien unless the attorney general determines that the defenses to knowingly employing an unauthorized alien established under this chapter do not apply.

Sec. 15. (a) If the attorney general notifies the department under section 14 of this chapter that an employer has knowingly employed an unauthorized alien, the department may initiate an administrative proceeding to determine if the employer has violated section 11 of this chapter.

(b) An administrative hearing under this chapter shall be conducted by an administrative law judge appointed by the department under IC 22-1-1-22.

(c) IC 4-21.5 applies to an administrative proceeding under this section.

(d) The department may initiate only one (1) administrative proceeding against an employer relating to the employment of all unauthorized aliens employed by the employer at the time the department initiates the administrative proceeding.

(e) The department may initiate an additional administrative proceeding against an employer under this section for a second or subsequent violation of section 11 of this chapter only for violations allegedly committed by the employer after the employer receives notice that the department has initiated an initial administrative proceeding against the employer under this section.

Sec. 16. If the department initiates an administrative proceeding under section 15 of this chapter, an administrative law judge may hold an administrative hearing and make a determination on an expedited basis.

Sec. 17. (a) Except as provided in sections 19 and 20 of this

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chapter, if an administrative law judge determines that an employer knowingly employed an unauthorized alien in violation of section 11 of this chapter, the following apply:

(1) The administrative law judge may do the following:

(A) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.

(B) Place the employer on probation for a three (3) year period. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(C) Order the employer to file a sworn affidavit signed by the employer with the department within three (3) business days after the order is issued under clause (A). The affidavit must include a statement that the employer:

(i) has terminated the employment of all unauthorized aliens; and

(ii) will not knowingly employ an unauthorized alien.

(2) The administrative law judge, after considering the relevant factors listed in subsection (b), may order an agency to suspend, for not more than ten (10) business days, a license described in section 18(a) of this chapter that is held by the employer.

(b) An administrative law judge may consider the following factors, if applicable, in deciding whether to order an agency to suspend an employer's license under subsection (a)(2):

(1) The number of unauthorized aliens employed by the employer.

(2) Any prior misconduct by the employer.

(3) The degree of harm resulting from the violation.

(4) The extent to which the employer made good faith efforts to comply with any applicable requirements under this chapter.

(5) The duration of the violation.

(6) The role of the directors, officers, or agents of the employer in the violation.

(7) Any other factors the administrative law judge considers relevant.

Sec. 18. (a) This section applies to all licenses held by an employer:

(1) that are necessary to operate the employer's business at

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the employer's business location where an unauthorized alien was employed by the employer; or

(2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

(b) If an employer fails to file a sworn affidavit required under section 17(a)(1)(C) of this chapter with the department within three (3) business days after the order requiring the filing of the affidavit is issued, the administrative law judge may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit described in section 17(a)(1)(C) of this chapter with the department.

(c) If an employer subject to an order filed under subsection (b) files a sworn affidavit required under section 17(a)(1)(C) of this chapter, the administrative law judge may order the appropriate agencies to reinstate the employer's suspended licenses.

**Sec. 19. If:**

(1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a second violation of section 11 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than five (5) years after the date of the initial violation; the administrative law judge may order the appropriate agencies to suspend, for not more than ten (10) business days, all licenses described in section 18(a) of this chapter that are held by the employer.

**Sec. 20. (a) If:**

(1) an administrative law judge determines that an employer knowingly employed an unauthorized alien in a third violation of section 11 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than five (5) years after the date of the initial violation; the administrative law judge may order the appropriate agencies to revoke for a period of time determined by the administrative law judge or permanently revoke all licenses held by the employer that are described in section 18(a) of this chapter.

(b) An employer may petition the governor under IC 4-21.5-3-30 to review an order issued by an administrative law judge revoking the employer's license or licenses.

**Sec. 21. (a)** An employer may, after the employer has exhausted all administrative and judicial remedies, request the governor to

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terminate or reduce the term of revocation of the employer's license or licenses under an order issued by an administrative law judge under section 20 of this chapter.

(b) The governor may terminate or reduce the term of revocation of an employer's license or licenses under an order issued by an administrative law judge under section 20 of this chapter and require the appropriate agency to reinstate the employer's license.

Sec. 22. (a) If an agency receives an order from an administrative law judge under section 17(a)(2), 18(b), or 19 of this chapter, the agency shall immediately suspend the license or licenses described in section 18(a) of this chapter that are held by the employer to which the order relates.

(b) If an agency receives an order from an administrative law judge under section 20 of this chapter, the agency shall immediately revoke the license or licenses described in section 18(a) of this chapter that are held by the employer to which the order relates.

Sec. 23. An administrative law judge shall send copies of all orders issued under sections 17, 18, 19, and 20 of this chapter to the attorney general.

Sec. 24. (a) In determining whether an individual is an unauthorized alien for purposes of this chapter, an administrative law judge may consider only the federal government's verification or status information provided under 8 U.S.C. 1373(c).

(b) The federal government's verification or status information provided under 8 U.S.C. 1373(c) creates a rebuttable presumption of an individual's lawful status.

(c) An administrative law judge may:

- (1) take notice of the federal government's verification or status information; and
- (2) request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

Sec. 25. The department may not initiate an administrative proceeding against an employer under section 15 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through the pilot program.

Sec. 26. An employer may establish as an affirmative defense against an alleged violation under section 11 of this chapter that the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

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**Sec. 27. The attorney general shall:**

- (1) maintain copies of orders received under section 23 of this chapter;
- (2) make the orders available on the attorney general's Internet web site; and
- (3) establish and maintain a data base of the names and addresses of the employers that have a violation under this chapter.

**Sec. 28. This chapter does not require an employer to take any action that the employer believes in good faith would violate federal law.**

**Sec. 29. After June 30, 2009, an employer shall verify the employment eligibility of each employee of the employer through the pilot program after hiring the employee.**

**Sec. 30. A person who files a complaint with the attorney general under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.**

**Sec. 31. The suspension or revocation of a license under this chapter does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages paid by the employer to an employee.**

**Sec. 32. This chapter shall be enforced without regard to race or national origin.**

**SECTION 3. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:**

**Chapter 1.7. Public Contract for Services; Unauthorized Aliens**

**Sec. 1. As used in this chapter, "contractor" means a person that has or is attempting to enter into a public contract for services with a state agency or political subdivision.**

**Sec. 2. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.**

**Sec. 3. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13. However, the term does not include a hospital organized and operated under IC 16-22-2, IC 16-22-8, or IC 16-23.**

**Sec. 4. As used in this chapter, "public contract for services" means any type of agreement between a state agency or a political subdivision and a contractor for the procurement of services.**

**Sec. 5. As used in this chapter, "state agency" has the meaning set forth in IC 4-6-3-1.**

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**Sec. 6. As used in this chapter, "subcontractor" means a person that:**

- (1) is a party to a contract with a contractor; and**
- (2) provides services for work the contractor is performing under a public contract for services.**

**Sec. 7. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).**

**Sec. 8. A state agency or political subdivision may not enter into or renew a public contract for services with a contractor if the state agency or political subdivision knows that the contractor or a subcontractor of the contractor employs or contracts with an unauthorized alien.**

**Sec. 9. Before a state agency or political subdivision may enter into a public contract for services with a contractor, the contractor shall certify in a manner that does not violate federal law that the contractor, at the time of the certification, does not employ or contract with an unauthorized alien.**

**Sec. 10. (a) A contractor or a subcontractor may not knowingly employ or contract with an unauthorized alien.**

**(b) If a contractor or subcontractor violates this section, the state agency or political subdivision may file a complaint concerning the violation by the contractor or subcontractor with the attorney general under IC 22-5-1.5.**

**Sec. 11. If a contractor uses a subcontractor, the subcontractor shall certify to the contractor in a manner that does not violate federal law that the subcontractor, at the time of certification, does not employ or contract with an unauthorized alien.**

**Sec. 12. A contractor shall maintain on file a certification of a subcontractor under section 11 of this chapter throughout the duration of the term of a contract with the subcontractor.**

**Sec. 13. (a) If a contractor determines that a subcontractor is in violation of this chapter, the contractor may terminate a contract with the subcontractor for the violation.**

**(b) A contract terminated under subsection (a) for a violation of this chapter by a subcontractor may not be considered a breach of contract by the contractor or the subcontractor.**

**(c) A subcontractor may file an action with a circuit or superior court having jurisdiction in the county to challenge a termination of a contract under subsection (a) not later than twenty (20) days after the contractor terminates the contract with the subcontractor."**

Page 8, between lines 26 and 27, begin a new paragraph and insert:

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"SECTION 13. IC 34-30-2-87.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 87.3. IC 22-5-1.5-25 (Concerning certain employers that employ unauthorized aliens).**

SECTION 4. [EFFECTIVE JULY 1, 2009] The department of labor may initiate an administrative proceeding against an employer under IC 22-5-1.5-15, as added by this act, only for a violation of IC 22-5-1.5-11, as added by this act, that occurs after June 30, 2009.

SECTION 5. [EFFECTIVE JULY 1, 2008] (a) The attorney general may request funding to implement IC 22-5-1.5-12, as added by this act, in the next biennial budget submission.

(b) This SECTION expires July 1, 2012.

SECTION 6. [EFFECTIVE JULY 1, 2008] (a) As used in this SECTION, "law enforcement officer" has the meaning set forth in IC 10-11-2-21.5, as added by this act.

(b) There is appropriated to the state police department one million dollars (\$1,000,000) from the state general fund for the state police department's use in training law enforcement officers under a memorandum of understanding entered into under IC 10-11-2-21.5, as added by this act.

(c) Money appropriated by this SECTION does not revert to the state general fund at the close of any fiscal year, but remains available for the use of the state police department until the provisions of IC 10-11-2-21.5, as added by this act, are fulfilled.

SECTION 7. [EFFECTIVE JULY 1, 2008] (a) The definitions in IC 22-5-1.5, as added by this act, apply throughout this SECTION.

(b) There is appropriated to the attorney general five hundred thousand dollars (\$500,000) from the state general fund for the attorney general's use in investigating complaints filed with the attorney general under IC 22-5-1.5-12, as added by this act, that an employer knowingly employed an unauthorized alien in violation of IC 22-5-1.5-11, as added by this act.

(c) Money appropriated by this SECTION does not revert to the state general fund at the close of any fiscal year, but remains available for use by the attorney general until the provisions of IC 22-5-1.5, as added by this act, are fulfilled.

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the commission on Hispanic/Latino affairs established by IC 4-23-28-2.

(b) The commission shall study and prepare a report on:

(1) the requirements a person must meet to qualify for

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naturalization; and

(2) the process by which United States citizenship is conferred upon a person.

(c) The commission shall submit the report prepared in accordance with subsection (b) to the legislative council in an electronic format under IC 5-14-6 before July 1, 2009.

(d) There is appropriated to the commission fifty thousand dollars (\$50,000) from the state general fund for the commission's use in studying and preparing a report on the topics listed in subsection (b). Any amount of the appropriated funds under this subsection that is not used or encumbered reverts to the state general fund after June 30, 2009.

(e) This SECTION expires January 1, 2010.

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the commission established under subsection (b).

(b) The immigration cost impact commission is established.

(c) The commission consists of the following members:

(1) The executive director of the department of homeland security or the director's designee.

(2) The commissioner of the department of labor or the commissioner's designee.

(3) The chairperson of the commission on Hispanic/Latino affairs established by IC 4-23-28-2 or the chairperson's designee who is a member of the commission on Hispanic/Latino affairs.

(4) The secretary of family and social services or the secretary's designee.

(5) The state superintendent of public instruction or the state superintendent's designee.

(6) The commissioner of the department of correction or the commissioner's designee.

(7) A representative of the business community.

(8) A representative of organized labor.

(9) A representative of hospital associations.

(10) Two (2) members of the senate, who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.

(11) Two (2) members of the house of representatives, who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.

The governor shall appoint the members designated by

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subdivisions (7) through (9).

(d) The members of the commission shall select one (1) of the appointed members to serve as chairperson and one (1) of the appointed members to serve as vice chairperson.

(e) The commission shall meet at the call of the chairperson. The commission shall meet at least one (1) time quarterly.

(f) The affirmative votes of a majority of the voting members appointed to the commission are required by the commission to take action on any measure, including a final report.

(g) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided 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.

(h) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses as provided 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.

(i) The commission shall study and prepare a report on the following:

(1) The financial impact of individuals who are unlawfully present in the United States on the following in Indiana:

- (A) Education.
- (B) Health care.
- (C) The criminal justice system, including court and attorney costs and costs of incarceration.
- (D) Welfare.

(2) The impact of individuals who are unlawfully present in the United States on the following in Indiana:

- (A) Wages.
- (B) State and local agencies and offices that issue or are required to check identification.

(3) Issues related to the following:

- (A) The state's authority and responsibility concerning a child who:
  - (i) is a United States citizen; and
  - (ii) has a parent who was or both parents who were

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deported for violation of immigration laws.

**(B) The societal and familial impact of deportation of a family member.**

**(j) The commission shall submit the report prepared in accordance with subsection (i) to the legislative council in an electronic format under IC 5-14-6 before July 1, 2009.**

**(k) There is appropriated to the commission fifty thousand dollars (\$50,000) from the state general fund for the commission's use in studying and preparing a report on the topics listed in subsection (i). Any amount of the appropriated funds under this subsection that is not used or encumbered reverts to the state general fund after June 30, 2009.**

**(l) This SECTION expires January 1, 2010."**

Renumber all SECTIONS consecutively.

(Reference is to ESB 345 as printed February 15, 2008.)

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 345 be amended to read as follows:

Page 5, between lines 30 and 31, begin a new paragraph and insert:

**"(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."**

(Reference is to ESB 345 as printed February 15, 2008.)

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 345 be amended to read as follows:

Page 8, between lines 26 and 27, begin a new paragraph and insert the following:

"SECTION 7. IC 34-55-10-2, AS AMENDED BY P.L.179-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.

(b) The amount of each exemption under subsection (c) applies until a rule is adopted by the department of financial institutions under section 2.5 of this chapter.

(c) The following property of a debtor domiciled in Indiana is exempt:

(1) Real estate or personal property constituting the personal or family residence of the debtor or a dependent of the debtor, or estates or rights in that real estate or personal property, of not more than fifteen thousand dollars (\$15,000). The exemption under this subdivision is individually available to joint debtors concerning property held by them as tenants by the entireties.

(2) Other real estate or tangible personal property of eight thousand dollars (\$8,000).

(3) Intangible personal property, including choses in action, deposit accounts, and cash (but excluding debts owing and income owing), of three hundred dollars (\$300).

(4) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(5) Any interest that the debtor has in real estate held as a tenant by the entireties. The exemption under this subdivision does not apply to a debt for which the debtor and the debtor's spouse are jointly liable.

(6) An interest, whether vested or not, that the debtor has in a retirement plan or fund to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan or fund by or on behalf of the debtor or the debtor's spouse:

(i) which were not subject to federal income taxation to the debtor at the time of the contribution; or

(ii) which are made to an individual retirement account in the manner prescribed by Section 408A of the Internal Revenue Code of 1986;

(B) earnings on contributions made under clause (A) that are

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not subject to federal income taxation at the time of the levy;  
and

(C) roll-overs of contributions made under clause (A) that are  
not subject to federal income taxation at the time of the levy.

(7) Money that is in a medical care savings account established  
under IC 6-8-11.

**(8) Money that is in a health savings account established  
under Section 223 of the Internal Revenue Code of 1986.**

~~(8)~~ (9) Any interest the debtor has in a qualified tuition program,  
as defined in Section 529(b) of the Internal Revenue Code of  
1986, but only to the extent funds in the program are not  
attributable to:

(A) excess contributions, as described in Section 529(b)(6) of  
the Internal Revenue Code of 1986, and earnings on the excess  
contributions;

(B) contributions made by the debtor within one (1) year  
before the date of the levy or the date a bankruptcy petition is  
filed by or against the debtor, and earnings on the  
contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate  
contributions made by the debtor for all programs under this  
subdivision and education savings accounts under subdivision

(9) having the same designated beneficiary:

- (i) not later than one (1) year before; and
- (ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by  
or against the debtor, and earnings on the aggregate  
contributions.

~~(9)~~ (10) Any interest the debtor has in an education savings  
account, as defined in Section 530(b) of the Internal Revenue  
Code of 1986, but only to the extent funds in the account are not  
attributable to:

(A) excess contributions, as described in Section 4973(e) of  
the Internal Revenue Code of 1986, and earnings on the excess  
contributions;

(B) contributions made by the debtor within one (1) year  
before the date of the levy or the date a bankruptcy petition is  
filed by or against the debtor, and earnings on the  
contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate  
contributions made by the debtor for all accounts under this  
subdivision and qualified tuition programs under subdivision

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(8) having the same designated beneficiary:

- (i) not later than one (1) year before; and
- (ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the excess contributions.

~~(10)~~ (11) The debtor's interest in a refund or a credit received or to be received under section 32 of the Internal Revenue Code of 1986.

(d) A bankruptcy proceeding that results in the ownership by the bankruptcy estate of a debtor's interest in property held in a tenancy by the entirety does not result in a severance of the tenancy by the entirety.

(e) Real estate or personal property upon which a debtor has voluntarily granted a lien is not, to the extent of the balance due on the debt secured by the lien:

- (1) subject to this chapter; or
- (2) exempt from levy or sale on execution or any other final process from a court."

Renumber all SECTIONS consecutively.

(Reference is to ESB 345 as printed February 15, 2008.)

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