March 20, 2009

ENGROSSED
SENATE BILL No. 477

DIGEST OF SB 477 (Updated March 17, 2009 9:30 am - DI 96)

Citations Affected: IC 22-4; IC 34-30; noncode.

Synopsis: Department of workforce development collections. Authorizes the department of workforce development (DWD) or its agent to collect delinquent unemployment insurance assessments and benefit overpayments after filing a judgment lien for the amount due. Limits the use of certain collection methods to individuals whose overpayment of unemployment insurance benefits occurred as the result of fraud. Authorizes collection of a judgment lien by taking any of the following actions: (1) Levy upon property held by a financial institution. (2) Garnishment. (3) Levy and sale of real or personal property. (4) Use of a data match system with financial institutions. Authorizes the DWD to employ special counsel or contract with a collection agency and to set the fee that the counsel or agency receives. Adds collection fees to the judgment lien amount. Lengthens from one to three years the time in which the DWD may begin a collection action against an officer or director of a corporation or a member of a limited liability company or partnership effecting a dissolution, liquidation, or withdrawal. Establishes civil penalties that may be assessed against a financial institution that fails to provide information required for a data match system. Provides immunity for a person or entity taking an action in good faith to collect unemployment insurance assessments unless the action is contrary to the DWD's direction to the person or entity.

Effective: July 1, 2009.

Kruse, Mishler

(HOUSE SPONSORS — NIEZGODSKI, TORR)

January 14, 2009, read first time and referred to Committee on Pensions and Labor.
February 12, 2009, amended, reported favorably — Do Pass.
February 16, 2009, read second time, amended, ordered engrossed.
February 17, 2009, engrossed. Read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 3, 2009, read first time and referred to Committee on Labor and Employment.
March 19, 2009, amended, reported — Do Pass.

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March 20, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 477

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

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

SECTION 1. IC 22-4-13-1, AS AMENDED BY P.L.108-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever an individual receives benefits or extended benefits to which the individual is not entitled under:

(1) this article; or

(2) the unemployment insurance law of the United States;

the department shall establish that an overpayment has occurred and establish the amount of the overpayment.

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

(c) Any individual who knowingly:

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

(2) fails, or causes another to fail, to disclose a material fact; and

as a result thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such amount, with interest at the rate of one-half percent (0.5%) per month,

to the department for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the six (6) year period following the later of the date the department establishes that an overpayment has occurred or the date that the determination of an overpayment becomes final following the exhaustion of all appeals.

(d) Any individual who, for any reason other than misrepresentation or nondisclosure as specified in subsection (c), has received any amount as benefits to which the individual is not entitled under this article or because of the subsequent receipt of income deductible from benefits which is allocable to the week or weeks for which such benefits were paid becomes not entitled to such benefits under this article shall be liable to repay such amount to the department for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the three (3) year period following the later of the date the department establishes that the overpayment occurred or the date that the determination that an overpayment occurred becomes final following the exhaustion of all appeals.

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

(f) Where it is finally determined by a deputy, an administrative law judge, the review board, or a court of competent jurisdiction that an individual has received benefits to which the individual is not entitled under this article, the department shall relieve the affected employer's experience account of any benefit charges directly resulting from such overpayment. However, an employer's experience account will not be relieved of the charges resulting from an overpayment of benefits which has been created by a retroactive payment by such employer directly or indirectly to the claimant for a period during which the claimant claimed and was paid benefits unless the employer reports such payment by the end of the calendar quarter following the calendar quarter in which the payment was made or unless and until the overpayment has been collected. Those employers electing to make payments in lieu of contributions shall not have their account relieved as the result of any overpayment unless and until such overpayment has

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been repaid to the unemployment insurance benefit fund.

(g) Where any individual is liable to repay any amount to the department for the unemployment insurance benefit fund for the restitution of benefits to which the individual is not entitled under this article, the amount due may be collectible without interest, except as otherwise provided in subsection (c), by civil action in the name of the state of Indiana, on relation of the department, which remedy by civil action shall be in addition to all other existing remedies and to the methods for collection provided in this article. **However, the department may use the remedies provided under IC 22-4-29.5 only if the department determines that the overpayment to an individual occurred as the result of fraud as described in subsection (c).**

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

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

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

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

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

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

SECTION 2. IC 22-4-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Unless an assessment is paid in full within seven (7) days after it becomes final, the commissioner, ~~or~~ the commissioner's representative, **or the commissioner's agent** may file with the clerk of the circuit court of **Marion County or** any **other** county in the state a warrant in duplicate, directed to the sheriff of such county, commanding the sheriff to levy upon and sell the property, real and personal, tangible and intangible, of the employing unit against whom the assessment has been made, in sufficient quantity to satisfy **the sum of the following:**

(1) The amount ~~thereof, plus~~ **of the assessment.**

(2) Damages to the amount of ten percent (10%) of ~~such~~ **the** assessment. ~~which shall be in addition to~~

(3) The penalties prescribed in this article for delinquent payment. ~~and in addition to the~~

(4) Interest at the rate of one percent (1%) per month upon the unpaid contribution from the date it was due to the date of

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payment of the warrant. ~~and in addition to~~

(5) All costs incident to the recording and execution ~~thereof.~~ **of the warrant.**

~~The remedies by garnishment and proceedings supplementary to execution as provided by law shall be available to the board to effectuate the purposes of this chapter.~~

(b) Within five (5) days after receipt of a warrant under ~~this section,~~ **subsection (a),** the clerk shall:

(1) retain the duplicate copy of the warrant;

(2) enter in the judgment record in the column for judgment debtors the name of the employing unit stated in the warrant, or if the employing unit is a partnership, the names of the partners;

(3) enter the amount sought by the warrant;

(4) enter the date the warrant was received; and

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

~~(b)~~ **(c)** Five (5) days after the clerk receives a warrant under subsection (a):

(1) the amount sought in the warrant;

(2) the damages to an amount of ten percent (10%) of the assessment as provided in subsection (a);

(3) penalties; and

(4) interest described in subsection (a);

become a lien upon the title to and interest in the real and personal property of the employing unit.

SECTION 3. IC 22-4-29-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a) After a warrant becomes a judgment lien under section 6 of this chapter, the department or its agent may take any of the following actions without judicial proceedings:**

(1) Levy upon the property of the employing unit that is held by a financial institution (as defined in IC 5-13-4-10) by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the employing unit's property. If the employing unit's property exceeds the amount owed to the state by the employing unit, the financial institution shall surrender the employing unit's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the employing unit has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

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(2) Employ remedies by garnishment.

(3) Levy upon and sell property, real and personal, tangible and intangible, of the employing unit.

(b) A person or an entity that is acting on behalf of the department is not liable for any action taken under this section in good faith to collect unpaid assessments unless the action is contrary to the department's direction to the person or entity.

SECTION 4. IC 22-4-29-14, AS ADDED BY P.L.138-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) The department may operate a data match system with each financial institution doing business in Indiana.

(b) If the department operates a data match system, each financial institution doing business in Indiana shall provide information to the department on all employers **and individuals:**

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

(2) that are subject to a warrant issued by the commissioner for failure to pay:

(A) a final assessment for contributions, interest, penalties, and any associated collection costs; **or**

(B) a final determination under IC 22-4-13-1(c) that an individual is liable for the repayment of benefits paid to the individual, interest, penalties, and any associated collection costs.

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

(1) Identify employers **and individuals** by comparing records maintained by the financial institution with records provided by the department by:

(A) name; and

(B) either:

(i) Social Security number; or

(ii) federal tax identification number.

(2) Comply with IC 31-25-4-31(c)(2). The child support bureau established by IC 31-25-3-1 shall regularly make reports submitted under IC 31-25-4-31(c)(2) accessible to the department or its agents for use only in the collection of unpaid final assessments **or determinations** 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;

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(B) the address of record; and
(C) either:
(i) the Social Security number; or
(ii) the federal tax identification number;
of the employers **and individuals** identified under subsection (b).

(e) When the department determines that the information required under subsection (d)(2) is identical for an employer **or individual** that holds an account with a financial institution and an employer **or individual** that is subject to a warrant issued by the commissioner for failure to pay:

(1) a final assessment for contributions, interest, penalties, and any associated collection costs; **or**

(2) a final determination under IC 22-4-13-1(c) that an individual is liable for the repayment of benefits paid to the individual, 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 **or individual** has an interest any debts owed to the financial institution that existed before:
(A) the department's warrant; and
(B) notification to the financial institution of the department's warrant.

(g) A financial institution ordered to block or encumber an account under this section is entitled to collect its normally scheduled account activity fees to maintain the account during the period the account is blocked or encumbered.

(h) All information provided by a financial institution under this section is confidential and is available only to the department or its agents for use only in the collection of unpaid final assessments **or determinations** described in subsection (b)(2).

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

(1) disclosing the required information to the department or the child support bureau established by IC 31-25-3-1;
(2) blocking or surrendering an individual's assets in response to a levy imposed under this section by:

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(A) the department; or

(B) a person or an entity acting on behalf of the department; or

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

(j) A person or an entity that is acting on behalf of the department is not liable for any action taken under this section in good faith to collect unpaid final assessments **or determinations** described in subsection (b)(2) unless:

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

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

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

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

(k) The department or its agents shall pay a financial institution performing the data match under this section a reasonable fee, as determined by the department, of at least five dollars ($5) for each warrant issued to the financial institution.

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

(m) An:

(1) officer or employee of the department; or

(2) officer or employee of a person or entity that is acting on behalf of the department;

who knowingly or intentionally discloses for a purpose other than the collection of unpaid final assessments **or determinations** described in subsection (b)(2) information provided by a financial institution that is confidential under this section commits a Class A misdemeanor.

(n) A financial institution that fails to comply with this section is subject to civil penalties as provided in IC 22-4-34-6.

SECTION 5. IC 22-4-29.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 29.5. Collection of Improper Benefit Payments

Sec. 1. (a) This chapter applies to an individual whose overpayment of benefits occurred as the result of fraud as described in IC 22-4-13-1(c).

(b) This chapter does not apply to an individual whose overpayment of benefits occurred without fault of the individual as

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described in IC 22-4-13-1(d).

Sec. 2. (a) When a deputy, an administrative law judge, the review board, or a court of competent jurisdiction finally determines under IC 22-4-13-1(c) that an individual has received an overpayment of benefits, the department may issue a warrant for collection of the unpaid overpayment.

(b) Before issuing a warrant under subsection (a), the department shall issue a demand notice for the payment of the overpayment and any interest or penalties accrued on the overpayment. The demand notice must state the following:

(1) That the individual has ten (10) days from the date the department mails the notice to:

(A) pay the amount demanded; or

(B) show reasonable cause for not paying the amount demanded.

(2) The statutory authority of the department for the issuance of a warrant.

(3) The earliest date on which a warrant may be filed and recorded.

(4) The statutory authority for the department to levy against the individual's property that is held by a financial institution.

(5) The remedies available to the individual to prevent the filing and recording of the judgment.

Sec. 3. (a) If the individual does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period described in section 2 of this chapter, the department may issue a warrant for the amount of the overpayment, interest, penalties, collection fee, and clerk's costs, if applicable.

(b) The department or the department's representative or agent may file the warrant in Marion County or in any county in which the individual owns property.

(c) When the circuit court clerk receives a warrant from the department or the department's representative or agent, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

(1) The name of the individual stated in the warrant.

(2) The amount of the overpayment, interest, penalties, collection fee, and clerk's costs, if applicable.

(3) The date the warrant was filed with the clerk.

(d) When the entry is made under subsection (c), the total amount of the warrant becomes a judgment against the individual.

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The judgment creates a lien in favor of the state that attaches to all the individual's interest in any:

(1) chose in action in the county; and

(2) real or personal property in the county;

excepting only negotiable instruments not yet due.

(e) A copy of the warrant shall be mailed to the individual stated in the warrant by certified mail to the individual's last known address not later than five (5) days after the date the warrant is filed with the clerk.

Sec. 4. After a warrant for an overpayment becomes a judgment under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

(1) Levy upon the property of the individual that is held by a financial institution (as defined in IC 5-13-4-10) by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the individual's property. If the individual's property exceeds the amount owed to the state by the individual, the financial institution shall surrender the individual's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the individual has on deposit, or subsequently deposits, in an amount not to exceed the amount owed.

(2) Garnish the accrued earnings and wages of the individual by sending a notice to the individual's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the individual in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the individual.

(3) The department may levy upon and sell property and may:

(A) take immediate possession of the property and store it in a secure place; or

(B) leave the property in the custody of the individual;

until the day of the sale. The department shall provide notice of the sale in one (1) newspaper as provided in IC 5-3-1-2. If the property is left in the custody of the individual, the

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department may require the individual to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and fees and second to the payment of the delinquent overpayment. Any balance remaining shall be paid to the individual.

(4) The department may use a data match system for collection of overpayments as provided in IC 22-4-29-14.

SECTION 6. IC 22-4-30-2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2. (a) The department may collect a judgment arising from a warrant for unpaid employer contributions or to recover the overpayment of benefits as a result of fraud under IC 22-4-13-1(c) in the same manner that any debt due the state is collected.**

(b) The department may employ special counsel or contract with a collection agency for the collection of a warrant plus interest, penalties, collection fees, clerk's costs, if applicable, and reasonable fees established under subsection (c).

(c) The commissioner shall set the fee that the special counsel or collection agency receives. The department must approve a claim for the fee before the fee is paid.

(d) Any fees assessed by the department under this section against an employing unit or individual owing a benefit overpayment shall become due and owing by the employing unit or the individual when the fee is added to the amount of the judgment lien established by an original or amended warrant under IC 22-4-29-6 or IC 22-4-29.5-2.

SECTION 7. IC 22-4-31-6, AS AMENDED BY P.L.138-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) If, after due notice, any employing unit defaults in the payment of any contributions or other money payments required by this article, the amount due may be collected by civil action in the name of the state of Indiana on the relation of the department. Such civil action is not to be considered as the exclusive method for collection of the contributions or money payments but is in addition to the method provided in IC 22-4-29-2 through IC 22-4-29-14 **and IC 22-4-32-20** and is to be brought only in such cases as the department may deem advisable in the interest of necessity and

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convenience.

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

SECTION 8. IC 22-4-31-7, AS AMENDED BY P.L.108-2006, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. It is expressly provided that the ~~foregoing~~ remedies **available in IC 22-4-29, IC 22-4-29.5, IC 22-4-30, this chapter, or IC 22-4-32** shall be cumulative and shall be in addition to all other existing remedies, and that no action taken by the department or its duly authorized representative **or agent**, the attorney general for the state of Indiana, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue ~~any~~ **one (1)** remedy to the exclusion of any other remedy.

SECTION 9. IC 22-4-32-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) As used in this section:

(1) "Dissolution" refers to dissolution of:

(A) a corporation under IC 23-1-45 through IC 23-1-48;

(B) a limited liability company under IC 23-18-9 or IC 23-18-10; or

(C) a partnership under IC 23-4-1 or IC 23-16-9.

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

(3) "Withdrawal" refers to the withdrawal of:

(A) a foreign corporation from Indiana under IC 23-1-50;

(B) a foreign limited liability company under IC 23-18-11; or

(C) a partnership under IC 23-4-1 or IC 23-16-10.

(b) The officers and directors of a corporation **or the members of a limited liability company or partnership employing unit** effecting dissolution, liquidation, or withdrawal shall do the following:

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

(2) Make all payments of contributions and skills 2016 training assessments under IC 22-4-10.5 to the department in a timely manner as required by this article.

(3) File with the department a form of notification within thirty (30) days of the adoption of a resolution or plan. The form of notification shall be prescribed by the department and may

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require information concerning:

(A) the corporation's, **limited liability company's, or partnership's** assets;

(B) the corporation's, **limited liability company's, or partnership's** liabilities;

(C) details of the plan or resolution;

(D) the names and addresses of:

(i) corporate officers, directors, and shareholders; **or**

(ii) the member of the limited liability company or partnership;

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

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

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

(c) Unless a clearance is issued under subsection (g), for a period of ~~one (1) year~~ **three (3) years** following the filing of the form of notification with the department, the corporate officers and directors **and the members** remain personally liable, subject to IC 23-1-35-1(e), **IC 23-4-1, IC 23-16-4, and IC 23-18-4,** for any acts or omissions that result in the distribution of corporate, **limited liability company, or partnership** assets in violation of the interests of the state. An officer, ~~or~~ **a** director, **or a member** held liable for an unlawful distribution under this subsection is entitled to contribution:

(1) from every other director **or member** who voted for or assented to the distribution, subject to IC 23-1-35-1(e), **IC 23-4-1, IC 23-16-4, and IC 23-18-4;** and

(2) from each shareholder for the amount the shareholder accepted.

(d) The corporation's officers' and directors' **or the limited liability company's or partnership's members'** personal liability includes all contributions, skills 2016 training assessments, penalties, interest, and fees associated with the collection of the liability due the department. In addition to the penalties provided elsewhere in this article, a penalty of up to thirty percent (30%) of the unpaid contributions and skills 2016 training assessments may be imposed on the corporate officers and directors **or the limited liability company or partnership members** for failure to take reasonable steps to set aside corporate, **limited liability company, or partnership** assets to meet the liability due the department.

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(e) If the department fails to begin a collection action against a corporate officer or director **or a limited liability company or partnership member** within ~~one (1) year~~ **three (3) years** after the filing of a completed form of notification with the department, the personal liability of the corporate officer or director **or a limited liability company or partnership member** expires. The filing of a substantially blank form of notification or a form containing misrepresentation of material facts does not constitute filing a form of notification for the purpose of determining the period of personal liability of:

(1) the officers and directors of the corporation; **or**

(2) the members of a limited liability company or partnership.

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

(g) The department may issue a clearance to a corporation, **limited liability company, or partnership** effecting dissolution, liquidation, or withdrawal if:

(1) the:

(A) officers and directors of the corporation; **or**

(B) members of a limited liability company or partnership;

have met the requirements of subsection (b); and

(2) request for the clearance is made in writing by:

(A) the officers and directors of the corporation; **or**

(B) members of a limited liability company or partnership;

within thirty (30) days after the filing of the form of notification with the department.

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

SECTION 10. IC 22-4-33-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except for fees charged under IC 22-4-17-12, **or interest, penalties, and associated collection costs assessed in connection with the repayment of benefit overpayments under IC 22-4-13-1(c),** no individual claiming benefits may be charged fees of any kind in a proceeding by the board, the review board, an administrative law judge, or the representative of any of them or by any court or any officer thereof.

(b) An individual claiming benefits in a proceeding before the board, the review board, an administrative law judge, or a court may be

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represented by counsel or other authorized agent, but no counsel or agent may charge or receive for his service more than an amount approved by the board or review board.

SECTION 11. IC 22-4-34-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6. (a) Whenever a financial institution fails to provide the information required under IC 22-4-29-14(b), the department shall send by certified mail a written notice of noncompliance. The notice of noncompliance must:**

(1) explain the requirements of IC 22-4-29-14; and

(2) advise the financial institution of possible civil penalties for noncompliance.

(b) If a financial institution does not provide the information required under IC 22-4-29-14(b) thirty (30) days after the date the financial institution receives the notice of noncompliance described in subsection (a):

(1) the department shall send a second notice of noncompliance to the financial institution; and

(2) the department may assess a civil penalty not to exceed fifty dollars ($50) on the financial institution.

(c) If a financial institution does not provide the information required under IC 22-4-29-14(b) fifteen (15) days after the financial institution receives the second notice of noncompliance described in subsection (b):

(1) the department shall send a third notice of noncompliance; and

(2) the department may assess a civil penalty not to exceed fifty dollars ($50) on the financial institution for each day the financial institution fails to provide the information required under IC 22-4-29-14(b).

(d) The department or the department's agent may collect the penalties provided under this section.

SECTION 12. IC 34-30-2-86.7, AS ADDED BY P.L.138-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 86.7. **IC 22-4-29-7.5 and** IC 22-4-29-14 (Concerning actions taken to collect unemployment insurance assessments).

SECTION 13. [EFFECTIVE JULY 1, 2009] **IC 22-4-32-23, as amended by this act, applies to a form of notification filed with the department of workforce development after June 30, 2009.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 477, 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:

Replace the effective dates in SECTIONS 1 through 8 with "[EFFECTIVE JULY 1, 2009]".

Replace the effective dates in SECTIONS 10 through 12 with "[EFFECTIVE JULY 1, 2009]".

Replace the effective dates in SECTIONS 14 through 16 with "[EFFECTIVE JULY 1, 2009]".

Page 3, line 10, after "article" delete ", including" and insert ". **However, the department may use the**".

Page 3, line 11, after "IC 22-4-29.5" delete "." and insert "**only if the department determines that the overpayment to an individual occurred as the result of fraud as described in subsection (c).**".

Page 5, line 9, delete "(a) As used in this section, "employer"".

Page 5, delete lines 10 through 16.

Page 5, line 17, reset in roman "(a)".

Page 5, line 17, delete "(b)".

Page 5, run in lines 9 through 17.

Page 5, line 19, reset in roman "(b)".

Page 5, line 19, delete "(c)".

Page 5, line 32, reset in roman "(c)".

Page 5, line 32, delete "(d)".

Page 5, line 32, reset in roman "(b),".

Page 5, line 33, delete "(c),".

Page 6, line 3, reset in roman "(b)(2).".

Page 6, delete line 4.

Page 6, line 5, reset in roman "(d)".

Page 6, line 5, delete "(e)".

Page 6, line 5, reset in roman "(b)".

Page 6, line 5, delete "(c)".

Page 6, line 13, reset in roman "(b).".

Page 6, line 13, delete "(c).".

Page 6, line 14, reset in roman "(e)".

Page 6, line 14, delete "(f)".

Page 6, line 15, reset in roman "(d)(2)".

Page 6, line 15, delete "(e)(2)".

Page 6, line 28, reset in roman "(f)".

Page 6, line 28, delete "(g)".

Page 6, line 37, reset in roman "(g)".

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Page 6, line 37, delete "(h)".
Page 6, line 41, reset in roman "(h)".
Page 6, line 41, delete "(i)".
Page 7, line 2, reset in roman "(b)(2).".
Page 7, line 2, delete "(c)(2).".
Page 7, line 3, reset in roman "(i)".
Page 7, line 3, delete "(j)".
Page 7, line 13, reset in roman "(j)".
Page 7, line 13, delete "(k)".
Page 7, line 16, reset in roman "(b)(2)".
Page 7, line 16, delete "(c)(2)".
Page 7, line 25, reset in roman "(k)".
Page 7, line 25, delete "(l)".
Page 7, line 29, reset in roman "(l)".
Page 7, line 29, delete "(m)".
Page 7, line 32, reset in roman "(m)".
Page 7, line 32, delete "(n)".
Page 7, line 38, reset in roman "(b)(2)".
Page 7, line 38, delete "(c)(2)".
Page 8, between lines 3 and 4, begin a new paragraph and insert:

"**Sec. 1. (a) This chapter applies to an individual whose overpayment of benefits occurred as the result of fraud as described in IC 22-4-13-1(c).**

(b) This chapter does not apply to an individual whose overpayment of benefits occurred without fault of the individual as described in IC 22-4-13-1(d).".

Page 8, line 4, delete "Sec. 1." and insert "**Sec. 2.**".
Page 8, line 26, delete "Sec. 2." and insert "**Sec. 3.**".
Page 8, line 28, delete "section 1" and insert "**section 2**".
Page 9, line 12, delete "Sec. 3." and insert "**Sec. 4.**".
Page 9, line 13, delete "section 2" and insert "**section 3**".
Page 10, line 14, delete "Sec. 4." and insert "**Sec. 5.**".
Page 10, line 16, delete "unpaid assessment" and insert "**an overpayment**".
Page 11, delete lines 20 through 42.
Page 12, delete lines 1 through 4.
Page 12, line 8, after "of" insert ":

(A)".

Page 12, line 9, after "IC 23-1-48" delete "." and insert ";

(B) a limited liability company under IC 23-18-9 or IC 23-18-10; or

(C) a partnership under IC 23-4-1 or IC 23-16-9.".

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Page 12, line 11, after "corporation's" insert ", **limited liability company's, or partnership's**".

Page 12, line 13, after "of" insert ":

(A)".

Page 12, line 14, after "IC 23-1-50" delete "." and insert ";

(B) a foreign limited liability company under IC 23-18-11; or

(C) a partnership under IC 23-4-1 or IC 23-16-10.".

Page 12, line 15, after "corporation" insert "**or the members of a limited liability company or partnership employing unit**".

Page 12, line 26, after "corporation's" insert ", **limited liability company's, or partnership's**".

Page 12, line 27, after "corporation's" insert ", **limited liability company's, or partnership's**".

Page 12, line 29, after "of" insert ":

(i)".

Page 12, line 30, after "shareholders;" insert "**or**

(ii) the member of the limited liability company or partnership;".

Page 12, line 31, after "shareholders'" insert "**or members'**".

Page 12, line 39, after "directors" insert "**and the members**".

Page 12, line 40, after "IC 23-1-35-1(e)," insert "**IC 23-4-1, IC 23-16-4, and IC 23-18-4,**".

Page 12, line 41, after "corporate" insert ", **limited liability company, or partnership**".

Page 12, line 42, after "officer" insert ",".

Page 12, line 42, strike "or" and insert "**a**".

Page 12, line 42, after "director" insert ", **or a member**".

Page 13, line 2, after "director" insert "**or member**".

Page 13, line 3, after "IC 23-1-35-1(e)" delete ";" and insert ", **IC 23-4-1, IC 23-16-4, and IC 23-18-4;**".

Page 13, line 6, after "directors'" insert "**or the limited liability company's or partnership's members'**".

Page 13, line 12, after "directors" insert "**or the limited liability company or partnership members**".

Page 13, line 13, after "corporate" insert ", **limited liability company, or partnership**".

Page 13, line 15, after "director" insert "**or a limited liability company or partnership member**".

Page 13, line 17, after "director" insert "**or a limited liability company or partnership member**".

Page 13, line 21, after "liability of" insert ":

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(1)".

Page 13, line 21, after "corporation" delete "." and insert "; **or**

(2) the members of a limited liability company or partnership.".

Page 13, line 27, after "corporation" insert ", **limited liability company, or partnership**".

Page 13, line 29, after "(1) the" insert ":

(A)".

Page 13, line 29, after "corporation" insert "; **or**

(B) members of a limited liability company or partnership;".

Page 13, line 29, beginning with "have" begin a new line block indented.

Page 13, line 31, after "by" insert ":

(A)".

Page 13, line 32, after "corporation" insert "; **or**

(B) members of a limited liability company or partnership;".

Page 13, line 32, beginning with "within" begin a new line block indented.

Page 13, line 35, after "officers" insert ",".

Page 13, line 35, strike "and".

Page 13, line 35, after "directors" insert ", **and members**".

Page 14, line 12, delete "IC 22-4-29-14(c)," and insert "**IC 22-4-29-14(b),**".

Page 14, line 19, delete "IC 22-4-29-14(c)" and insert "**IC 22-4-29-14(b)**".

Page 14, line 24, delete "one".

Page 14, line 25, delete "thousand" and insert "**fifty**".

Page 14, line 25, delete "($1,000)" and insert "**($50)**".

Page 14, line 27, delete "IC 22-4-29-14(c)" and insert "**IC 22-4-29-14(b)**".

Page 14, line 32, delete "one".

Page 14, line 33, delete "thousand" and insert "**fifty**".

Page 14, line 33, delete "($1,000)" and insert "**($50)**".

Page 14, line 35, delete "IC 22-4-29-14(c)." and insert "**IC 22-4-29-14(b).**".

Page 14, delete lines 38 through 42.

Delete pages 15 through 16.

Page 17, delete lines 1 through 9.

Page 17, line 22, delete "the effective date of" and insert "**June 30, 2009.**".

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Page 17, delete lines 23 through 24.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 477 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 477 be amended to read as follows:
Page 7, line 32, delete "(o)" and insert "**(n)**".

(Reference is to SB 477 as printed February 13, 2009.)

KRUSE

COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred Senate Bill 477, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:
Page 5, line 21, delete "IC 22-4-13-1" and insert "**IC 22-4-13-1(c)**".
Page 6, line 13, delete "IC 22-4-13-1" and insert "**IC 22-4-13-1(c)**".
Page 7, line 37, after "payments" delete ".".
Page 8, line 4, delete "IC 22-4-13-1" and insert "**IC 22-4-13-1(c)**".
Page 10, delete lines 12 through 15.
Page 10, line 20, after "benefits" insert "**as a result of fraud under IC 22-4-13-1(c)**".
Page 13, line 40, delete "IC 22-4-13-1," and insert "**IC 22-4-13-1(c),**".
Page 14, delete lines 41 through 42.

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Page 15, delete lines 1 through 3.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 477 as reprinted February 17, 2009.)

NIEZGODSKI, Chair

Committee Vote: yeas 9, nays 0.

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o
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y