



Reprinted  
April 13, 2011

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# ENGROSSED SENATE BILL No. 86

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DIGEST OF SB 86 (Updated April 12, 2011 4:40 pm - DI 102)

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

**Synopsis:** Unemployment benefits. Specifies the conditions for the payment of extended unemployment benefits after March 1, 2011. Requires that a drug test used for unemployment purposes be performed at a United States Department of Health and Human Services certified laboratory, with specimen collection performed by a collector certified by the United States Department of Transportation, and that the cost of the drug test be paid by the employer. Provides that an individual is considered to have refused an offer of suitable work if the individual: (1) tests positive for drugs after; or (2) refuses without good cause to submit to; a drug test required by a prospective employer as a condition of an offer of employment. Specifies the conditions under which a drug test is positive for purposes of the unemployment insurance system. Prohibits the admission of department of workforce development (department) records concerning the results of a drug test against a defendant in a criminal proceeding. Makes technical corrections.

**Effective:** March 1, 2011 (retroactive); July 1, 2011.

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## Leising, Schneider, Tallian, Kruse

(HOUSE SPONSORS — LEONARD, GUTWEIN)

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January 5, 2011, read first time and referred to Committee on Pensions and Labor.  
January 12, 2011, reported favorably — Do Pass.  
January 24, 2011, read second time, amended, ordered engrossed.  
January 25, 2011, engrossed. Read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Employment, Labor and Pensions.  
April 7, 2011, amended, reported — Do Pass.  
April 11, 2011, read second time, amended, ordered engrossed.  
April 12, 2011, engrossed. Read third time, recommitted to Committee of One, amended; passed. Yeas 88, nays 1.

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ES 86—LS 6334/DI 96+



Reprinted  
April 13, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 86

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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:*

- 1 SECTION 1. IC 22-4-2-34, AS AMENDED BY P.L.175-2009,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 MARCH 1, 2011 (RETROACTIVE)]: Sec. 34. (a) With respect to  
4 benefits for weeks of unemployment beginning after August 13, 1981,  
5 "extended benefit period" means a period which begins with the third  
6 week after a week for which there is a state "on" indicator and ends  
7 with the later of the following:  
8 (1) The third week after the first week for which there is a state  
9 "off" indicator.  
10 (2) The thirteenth consecutive week of such period.  
11 (b) However, no extended benefit period may begin by reason of a  
12 state "on" indicator before the fourteenth week following the end of a  
13 prior extended benefit period which was in effect with respect to this  
14 state.  
15 (c) There is a state "on" indicator for this state for a week if the  
16 commissioner determines, in accordance with the regulations of the  
17 United States Secretary of Labor, that for the period consisting of such

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1 week and the immediately preceding twelve (12) weeks, the rate of  
2 insured unemployment (not seasonally adjusted) under this article:

- 3 (1) equaled or exceeded one hundred twenty percent (120%) of
- 4 the average of such rates for the corresponding 13-week period
- 5 ending in each of the preceding two (2) calendar years; and
- 6 (2) equaled or exceeded five percent (5%).

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

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

- 16 (1) the average rate of total unemployment in Indiana, seasonally
- 17 adjusted, as determined by the United States Secretary of Labor,
- 18 for the period consisting of the most recent three (3) months for
- 19 which data for all states are published before the close of the
- 20 week, equals or exceeds six and five-tenths percent (6.5%); and
- 21 (2) the average rate of total unemployment in Indiana, seasonally
- 22 adjusted, as determined by the United States Secretary of Labor,
- 23 for the three (3) month period referred to in subdivision (1) equals
- 24 or exceeds one hundred ten percent (110%) of the average for
- 25 either or both of the corresponding three (3) month periods ending
- 26 in the two (2) preceding calendar years.

27 There is a state "off" indicator for a week if either of the requirements  
28 in subdivisions (1) and (2) are not satisfied. However, any week for  
29 which there would otherwise be a state "on" indicator under this section  
30 continues to be subject to the "on" indicator and shall not be considered  
31 a week for which there is a state "off" indicator. This subsection expires  
32 on the later of December 5, 2009, or the week ending four (4) weeks  
33 before the last week for which federal sharing is authorized by Section  
34 2005(a) of Division B, Title II (the federal Assistance to Unemployed  
35 Workers and Struggling Families Act) of the federal American  
36 Recovery and Reinvestment Act of 2009 (P.L. 111-5).

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

42 (f) With respect to benefits for weeks of unemployment beginning

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1 after August 13, 1981, "rate of insured unemployment," for purposes  
 2 of subsection (c), means the percentage derived by dividing:  
 3 (1) the average weekly number of individuals filing claims for  
 4 regular compensation in this state for weeks of unemployment  
 5 with respect to the most recent 13 consecutive week period (as  
 6 determined by the board on the basis of this state's reports to the  
 7 United States Secretary of Labor); by  
 8 (2) the average monthly employment covered under this article  
 9 for the first four (4) of the most recent six (6) completed calendar  
 10 quarters ending before the end of such 13-week period.  
 11 (g) "Regular benefits" means benefits payable to an individual under  
 12 this article or under the law of any other state (including benefits  
 13 payable to federal civilian employees and to ex-servicemen pursuant to  
 14 5 U.S.C. 8501 through 8525) other than extended benefits. "Additional  
 15 benefits" means benefits other than extended benefits and which are  
 16 totally financed by a state payable to exhaustees by reason of  
 17 conditions of high unemployment or by reason of other special factors  
 18 under the provisions of any state law. If extended compensation is  
 19 payable to an individual by this state and additional compensation is  
 20 payable to the individual for the same week by any state, the individual  
 21 may elect which of the two (2) types of compensation to claim.  
 22 (h) "Extended benefits" means benefits (including benefits payable  
 23 to federal civilian employees and to ex-servicemen pursuant to 5  
 24 U.S.C. 8501 through 8525) payable to an individual under the  
 25 provisions of this article for weeks of unemployment in the individual's  
 26 "eligibility period". Pursuant to Section 3304 of the Internal Revenue  
 27 Code extended benefits are not payable to interstate claimants filing  
 28 claims in an agent state which is not in an extended benefit period,  
 29 against the liable state of Indiana when the state of Indiana is in an  
 30 extended benefit period. This prohibition does not apply to the first two  
 31 (2) weeks claimed that would, but for this prohibition, otherwise be  
 32 payable. However, only one (1) such two (2) week period will be  
 33 granted on an extended claim. Notwithstanding any other provisions of  
 34 this chapter, with respect to benefits for weeks of unemployment  
 35 beginning after October 31, 1981, if the benefit year of any individual  
 36 ends within an extended benefit period, the remaining balance of  
 37 extended benefits that the individual would, but for this clause, be  
 38 entitled to receive in that extended benefit period, with respect to  
 39 weeks of unemployment beginning after the end of the benefit year,  
 40 shall be reduced (but not below zero (0)) by the product of the number  
 41 of weeks for which the individual received any amounts as trade  
 42 readjustment allowances within that benefit year, multiplied by the

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1 individual's weekly benefit amount for extended benefits.  
 2 (i) "Eligibility period" of an individual means the period consisting  
 3 of the weeks in the individual's benefit period which begin in an  
 4 extended benefit period and, if the individual's benefit period ends  
 5 within such extended benefit period, any weeks thereafter which begin  
 6 in such extended benefit period. For any weeks of unemployment  
 7 beginning after February 17, 2009, and before January 1, ~~2010~~, **2012**,  
 8 an individual's eligibility period (as described in Section 203(c) of the  
 9 Federal-State Unemployment Compensation Act of 1970) is, for  
 10 purposes of any determination of eligibility for extended compensation  
 11 under state law, considered to include any week that begins:  
 12 (1) after the date as of which the individual exhausts all rights to  
 13 emergency unemployment compensation; and  
 14 (2) during an extended benefit period that began on or before the  
 15 date described in subdivision (1).  
 16 (j) "Exhaustee" means an individual who, with respect to any week  
 17 of unemployment in the individual's eligibility period:  
 18 (1) has received, prior to such week, all of the regular benefits  
 19 including dependent's allowances that were available to the  
 20 individual under this article or under the law of any other state  
 21 (including benefits payable to federal civilian employees and  
 22 ex-servicemen under 5 U.S.C. 8501 through 8525) in the  
 23 individual's current benefit period that includes such week.  
 24 However, for the purposes of this subsection, an individual shall  
 25 be deemed to have received all of the regular benefits that were  
 26 available to the individual although as a result of a pending appeal  
 27 with respect to wages that were not considered in the original  
 28 monetary determination in the individual's benefit period or  
 29 although a nonmonetary decision denying benefits is pending, the  
 30 individual may subsequently be determined to be entitled to  
 31 added regular benefits;  
 32 (2) may be entitled to regular benefits with respect to future  
 33 weeks of unemployment but such benefits are not payable with  
 34 respect to such week of unemployment by reason of seasonal  
 35 limitations in any state unemployment insurance law; or  
 36 (3) having had the individual's benefit period expire prior to such  
 37 week, has no, or insufficient, wages on the basis of which the  
 38 individual could establish a new benefit period that would include  
 39 such week;  
 40 and has no right to unemployment benefits or allowances, as the case  
 41 may be, under the Railroad Unemployment Insurance Act, the Trade  
 42 Act of 1974, the Automotive Products Trade Act of 1965 and such

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1 other federal laws as are specified in regulations issued by the United  
2 States Secretary of Labor, and has not received and is not seeking  
3 unemployment benefits under the unemployment compensation law of  
4 Canada; but if the individual is seeking such benefits and the  
5 appropriate agency finally determines that the individual is not entitled  
6 to benefits under such law, the individual is considered an exhaustee.

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

10 (l) **With respect to compensation for weeks of unemployment**  
11 **beginning after March 1, 2011, and ending on the later of**  
12 **December 10, 2011, or the week ending four (4) weeks before the**  
13 **last week for which federal sharing is authorized by Section**  
14 **2005(a) of Division B, Title II (the federal Assistance to**  
15 **Unemployed and Struggling Families Act) of the federal American**  
16 **Recovery and Reinvestment Act of 2009 (P.L. 111-5), in addition to**  
17 **the tests for a state "on" indicator under subsections (c) and (d),**  
18 **there is a state "on" indicator for a week if:**

- 19 (1) **the average rate of insured unemployment for the period**
- 20 **consisting of the week and the immediately preceding twelve**
- 21 **(12) weeks equals or exceeds five percent (5%); and**
- 22 (2) **the average rate of insured unemployment for the period**
- 23 **consisting of the week and the immediately preceding twelve**
- 24 **(12) weeks equals or exceeds one hundred twenty percent**
- 25 **(120%) of the average rates of insured unemployment for the**
- 26 **corresponding thirteen (13) week period ending in each of the**
- 27 **preceding three (3) calendar years.**

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

33 (n) **With respect to compensation for weeks of unemployment**  
34 **beginning after March 1, 2011, and ending on the later of**  
35 **December 10, 2011, or the week ending four (4) weeks before the**  
36 **last week for which federal sharing is authorized by Section**  
37 **2005(a) of Division B, Title II (the federal Assistance to**  
38 **Unemployed and Struggling Families Act) of the federal American**  
39 **Recovery and Reinvestment Act of 2009 (P.L. 111-5), in addition to**  
40 **the tests for a state "on" indicator under subsections (c), (d), and**  
41 **(l) there is a state "on" indicator for a week if:**

- 42 (1) **the average rate of total unemployment (seasonally**

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1           adjusted), as determined by the United States Secretary of  
 2           Labor, for the period consisting of the most recent three (3)  
 3           months for which data for all states are published before the  
 4           close of the week equals or exceeds six and one-half percent  
 5           (6.5%); and  
 6           (2) the average rate of total unemployment in Indiana  
 7           (seasonally adjusted), as determined by the United States  
 8           Secretary of Labor, for the three (3) month period referred to  
 9           in subdivision (1) equals or exceeds one hundred ten percent  
 10          (110%) of the average for any or all of the corresponding  
 11          three (3) month periods ending in the three (3) preceding  
 12          calendar years.

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

18          SECTION 2. IC 22-4-2-40 IS ADDED TO THE INDIANA CODE  
 19          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20          1, 2011]: **Sec. 40. As used in this article, "drug test" means a test  
 21          that contains at least a five (5) drug panel that tests for the  
 22          following:**

- 23               (1) Amphetamines.
- 24               (2) Cocaine.
- 25               (3) Opiates (2,000 ng/ml).
- 26               (4) PCP.
- 27               (5) THC.

28          **A drug test described in this section must be performed at a United  
 29          States Department of Health and Human Services certified  
 30          laboratory, with specimen collection performed by a collector  
 31          certified by the United States Department of Transportation and  
 32          the cost of the drug test paid by the employer.**

33          SECTION 3. IC 22-4-12-4, AS AMENDED BY P.L.175-2009,  
 34          SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35          MARCH 1, 2011 (RETROACTIVE)]: **Sec. 4. (a) Benefits shall be  
 36          computed upon the basis of wage credits of an individual in the  
 37          individual's base period. Wage credits shall be reported by the  
 38          employer and credited to the individual in the manner prescribed by the  
 39          board. With respect to initial claims filed for any week beginning on  
 40          and after July 7, 1991, the maximum total amount of benefits payable  
 41          to any eligible individual during any benefit period shall not exceed  
 42          twenty-six (26) times the individual's weekly benefit, or twenty-eight**

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1 percent (28%) of the individual's wage credits with respect to the  
 2 individual's base period, whichever is less. If such maximum total  
 3 amount of benefits is not a multiple of one dollar (\$1), it shall be  
 4 computed to the next lower multiple of one dollar (\$1).

5 (b) Except as provided in subsection (d), the total extended benefit  
 6 amount payable to any eligible individual with respect to the  
 7 individual's applicable benefit period shall be fifty percent (50%) of the  
 8 total amount of regular benefits (including dependents' allowances)  
 9 which were payable to the individual under this article in the applicable  
 10 benefit year, or thirteen (13) times the weekly benefit amount  
 11 (including dependents' allowances) which was payable to the individual  
 12 under this article for a week of total unemployment in the applicable  
 13 benefit year, whichever is the lesser amount.

14 (c) This subsection applies to individuals who file a disaster  
 15 unemployment claim or a state unemployment insurance claim after  
 16 June 1, 1990, and before June 2, 1991, or during another time specified  
 17 in another state statute. An individual is entitled to thirteen (13) weeks  
 18 of additional benefits, as originally determined, if:

19 (1) the individual has established:

20 (A) a disaster unemployment claim under the Stafford Disaster  
 21 Relief and Emergency Assistance Act; or

22 (B) a state unemployment insurance claim as a direct result of  
 23 a major disaster;

24 (2) all regular benefits and all disaster unemployment assistance  
 25 benefits:

26 (A) have been exhausted by the individual; or

27 (B) are no longer payable to the individual due to the  
 28 expiration of the disaster assistance period; and

29 (3) the individual remains unemployed as a direct result of the  
 30 disaster.

31 (d) For purposes of this subsection, "high unemployment period"  
 32 means a period during which an extended benefit period would be in  
 33 effect if IC 22-4-2-34(d)(1) were applied by substituting "eight percent  
 34 (8%)" for "six and five-tenths percent (6.5%)". Effective with respect  
 35 to weeks beginning in a high unemployment period, the total extended  
 36 benefit amount payable to an eligible individual with respect to the  
 37 applicable benefit year is equal to the least of the following amounts:

38 (1) Eighty percent (80%) of the total amount of regular benefits  
 39 that were payable to the eligible individual under this article in  
 40 the applicable benefit year.

41 (2) Twenty (20) times the weekly benefit amount that was payable  
 42 to the eligible individual under this article for a week of total

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1 unemployment in the applicable benefit year.  
2 (3) Forty-six (46) times the weekly benefit amount that was  
3 payable to the eligible individual under this article for a week of  
4 total unemployment in the applicable benefit year, reduced by the  
5 regular unemployment compensation benefits paid (or deemed  
6 paid) during the benefit year.

7 This subsection expires on the later of December 5, 2009, or the week  
8 ending four (4) weeks before the last week for which federal sharing is  
9 authorized by Section 2005(a) of Division B, Title II (the federal  
10 Assistance to Unemployed Workers and Struggling Families Act) of  
11 the federal American Recovery and Reinvestment Act of 2009 (P.L.  
12 111-5).

13 (e) For purposes of this subsection, "high unemployment  
14 period" means a period during which an extended benefit period  
15 would be in effect if IC 22-4-2-34(n)(1) were applied by substituting  
16 "eight percent (8%)" for "six and one-half percent (6.5%)".  
17 Effective with respect to weeks of unemployment beginning after  
18 March 1, 2011, and ending on the later of December 10, 2011, or  
19 the week ending four (4) weeks before the last week for which  
20 federal sharing is authorized by Section 2005(a) of Division B, Title  
21 II (the federal Assistance to Unemployed and Struggling Families  
22 Act) of the federal American Recovery and Reinvestment Act of  
23 2009 (P.L. 111-5), in a high unemployment period, the total  
24 extended benefit amount payable to an eligible individual with  
25 respect to the applicable benefit year is equal to the lesser of the  
26 following amounts:

27 (1) Eighty percent (80%) of the total amount of regular  
28 benefits that were payable to the eligible individual under this  
29 article in the applicable benefit year.

30 (2) Twenty (20) times the weekly benefit amount that was  
31 payable to the eligible individual under this article for a week  
32 of total unemployment in the applicable benefit year.

33 SECTION 4. IC 22-4-15-2, AS AMENDED BY P.L.175-2009,  
34 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2011]: Sec. 2. (a) With respect to benefit periods established  
36 on and after July 3, 1977, an individual is ineligible for waiting period  
37 or benefit rights, or extended benefit rights, if the department finds that,  
38 being totally, partially, or part-totally unemployed at the time when the  
39 work offer is effective or when the individual is directed to apply for  
40 work, the individual fails without good cause:

41 (1) to apply for available, suitable work when directed by the  
42 commissioner, the deputy, or an authorized representative of the

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1 department of workforce development or the United States  
2 training and employment service;

3 (2) to accept, at any time after the individual is notified of a  
4 separation, suitable work when found for and offered to the  
5 individual by the commissioner, the deputy, or an authorized  
6 representative of the department of workforce development or the  
7 United States training and employment service, or an employment  
8 unit; or

9 (3) to return to the individual's customary self-employment when  
10 directed by the commissioner or the deputy.

11 (b) With respect to benefit periods established on and after July 6,  
12 1980, the ineligibility shall continue for the week in which the failure  
13 occurs and until the individual earns remuneration in employment  
14 equal to or exceeding the weekly benefit amount of the individual's  
15 claim in each of eight (8) weeks. If the qualification amount has not  
16 been earned at the expiration of an individual's benefit period, the  
17 unearned amount shall be carried forward to an extended benefit period  
18 or to the benefit period of a subsequent claim.

19 (c) With respect to extended benefit periods established on and after  
20 July 5, 1981, the ineligibility shall continue for the week in which the  
21 failure occurs and until the individual earns remuneration in  
22 employment equal to or exceeding the weekly benefit amount of the  
23 individual's claim in each of four (4) weeks.

24 (d) If an individual failed to apply for or accept suitable work as  
25 outlined in this section, the maximum benefit amount of the  
26 individual's current claim, as initially determined, shall be reduced by  
27 an amount determined as follows:

28 (1) For the first failure to apply for or accept suitable work, the  
29 maximum benefit amount of the individual's current claim is  
30 equal to the result of:

31 (A) the maximum benefit amount of the individual's current  
32 claim, as initially determined; multiplied by

33 (B) seventy-five percent (75%);

34 rounded (if not already a multiple of one dollar (\$1)) to the next  
35 higher dollar.

36 (2) For the second failure to apply for or accept suitable work, the  
37 maximum benefit amount of the individual's current claim is  
38 equal to the result of:

39 (A) the maximum benefit amount of the individual's current  
40 claim determined under subdivision (1); multiplied by

41 (B) eighty-five percent (85%);

42 rounded (if not already a multiple of one dollar (\$1)) to the next

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1 higher dollar.

2 (3) For the third and any subsequent failure to apply for or accept

3 suitable work, the maximum benefit amount of the individual's

4 current claim is equal to the result of:

5 (A) the maximum benefit amount of the individual's current

6 claim determined under subdivision (2); multiplied by

7 (B) ninety percent (90%);

8 rounded (if not already a multiple of one dollar (\$1)) to the next

9 higher dollar.

10 (e) In determining whether or not any such work is suitable for an

11 individual, the department shall consider:

12 (1) the degree of risk involved to such individual's health, safety,

13 and morals;

14 (2) the individual's physical fitness and prior training and

15 experience;

16 (3) the individual's length of unemployment and prospects for

17 securing local work in the individual's customary occupation; and

18 (4) the distance of the available work from the individual's

19 residence.

20 However, work under substantially the same terms and conditions

21 under which the individual was employed by a base-period employer,

22 which is within the individual's prior training and experience and

23 physical capacity to perform, shall be considered to be suitable work

24 unless the claimant has made a bona fide change in residence which

25 makes such offered work unsuitable to the individual because of the

26 distance involved. During the fifth through the eighth consecutive week

27 of claiming benefits, work is not considered unsuitable solely because

28 the work pays not less than ninety percent (90%) of the individual's

29 prior weekly wage. After eight (8) consecutive weeks of claiming

30 benefits, work is not considered unsuitable solely because the work

31 pays not less than eighty percent (80%) of the individual's prior weekly

32 wage. However, work is not considered suitable under this section if

33 the work pays less than Indiana's minimum wage as determined under

34 IC 22-2-2. For an individual who is subject to section 1(c)(8) of this

35 chapter, the determination of suitable work for the individual must

36 reasonably accommodate the individual's need to address the physical,

37 psychological, legal, and other effects of domestic or family violence.

38 (f) Notwithstanding any other provisions of this article, no work

39 shall be considered suitable and benefits shall not be denied under this

40 article to any otherwise eligible individual for refusing to accept new

41 work under any of the following conditions:

42 (1) If the position offered is vacant due directly to a strike,

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- 1           lockout, or other labor dispute.
- 2           (2) If the remuneration, hours, or other conditions of the work
- 3           offered are substantially less favorable to the individual than
- 4           those prevailing for similar work in the locality.
- 5           (3) If as a condition of being employed the individual would be
- 6           required to join a company union or to resign from or refrain from
- 7           joining a bona fide labor organization.
- 8           (4) If as a condition of being employed the individual would be
- 9           required to discontinue training into which the individual had
- 10          entered with the approval of the department.
- 11          (g) Notwithstanding subsection (e), with respect to extended benefit
- 12          periods established on and after July 5, 1981, "suitable work" means
- 13          any work which is within an individual's capabilities. However, if the
- 14          individual furnishes evidence satisfactory to the department that the
- 15          individual's prospects for obtaining work in the individual's customary
- 16          occupation within a reasonably short period are good, the
- 17          determination of whether any work is suitable work shall be made as
- 18          provided in subsection (e).
- 19          (h) With respect to extended benefit periods established on and after
- 20          July 5, 1981, no work shall be considered suitable and extended
- 21          benefits shall not be denied under this article to any otherwise eligible
- 22          individual for refusing to accept new work under any of the following
- 23          conditions:
- 24                (1) If the gross average weekly remuneration payable to the
- 25                individual for the position would not exceed the sum of:
- 26                      (A) the individual's average weekly benefit amount for the
- 27                      individual's benefit year; plus
- 28                      (B) the amount (if any) of supplemental unemployment
- 29                      compensation benefits (as defined in Section 501(c)(17)(D) of
- 30                      the Internal Revenue Code) payable to the individual for such
- 31                      week.
- 32                (2) If the position was not offered to the individual in writing or
- 33                was not listed with the department of workforce development.
- 34                (3) If such failure would not result in a denial of compensation
- 35                under the provisions of this article to the extent that such
- 36                provisions are not inconsistent with the applicable federal law.
- 37                (4) If the position pays wages less than the higher of:
- 38                      (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the
- 39                      Fair Labor Standards Act of 1938), without regard to any
- 40                      exemption; or
- 41                      (B) the state minimum wage (IC 22-2-2).
- 42                (i) The department of workforce development shall refer individuals

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1 eligible for extended benefits to any suitable work (as defined in  
2 subsection (g)) to which subsection (h) would not apply.

3 **(j) An individual is considered to have refused an offer of**  
4 **suitable work under subsection (a) if an offer of work is withdrawn**  
5 **by an employer after an individual:**

6 **(1) tests positive for drugs after a drug test given on behalf of**  
7 **the prospective employer as a condition of an offer of**  
8 **employment; or**

9 **(2) refuses, without good cause, to submit to a drug test**  
10 **required by the prospective employer as a condition of an**  
11 **offer of employment.**

12 **(k) For purposes of this article, a drug test is not found to be**  
13 **positive unless:**

14 **(1) a second confirmation test:**

15 **(A) renders a positive result that has been performed by a**  
16 **SAMHSA (as defined in IC 22-10-15-3) certified**  
17 **laboratory on the same sample used for the first screen test**  
18 **using gas chromatography mass spectrometry for the**  
19 **purposes of confirming or refuting the screen test results;**  
20 **and**

21 **(B) has been reviewed by a licensed physician and:**

22 **(i) the laboratory results described in clause (A);**

23 **(ii) the individual's medical history; and**

24 **(iii) other relevant biomedical information;**

25 **confirm a positive result of the drug tests; or**

26 **(2) the individual who has submitted to the drug test has no**  
27 **valid medical reason for testing positive for the substance**  
28 **found in the drug test.**

29 **(l) The department's records concerning the results of a drug**  
30 **test described in subsection (j) may not be admitted against a**  
31 **defendant in a criminal proceeding.**

32 **SECTION 5. An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 86, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 86 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 9, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 86 be amended to read as follows:

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

"SECTION 1. IC 22-4-2-40 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 40. As used in this article, "drug test" means a test that contains at least a five (5) drug panel that tests for the following:**

- (1) **Amphetamines.**
- (2) **Cocaine.**
- (3) **Opiates (2,000 ng/ml).**
- (4) **PCP.**
- (5) **THC.**

SECTION 2. IC 22-4-15-2, AS AMENDED BY P.L.175-2009, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 2. (a)** With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

- (1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;
- (2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the

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individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or

(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

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(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

(1) the degree of risk involved to such individual's health, safety, and morals;

(2) the individual's physical fitness and prior training and experience;

(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved. During the fifth through the eighth consecutive week of claiming benefits, work is not considered unsuitable solely because the work pays not less than ninety percent (90%) of the individual's prior weekly wage. After eight (8) consecutive weeks of claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage. However, work is not considered suitable under this section if the work pays less than Indiana's minimum wage as determined under IC 22-2-2. For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

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(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

**(j) For benefit periods established on and after June 30, 2011, an individual is ineligible for waiting period or benefit rights, or**

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extended benefit rights, if the department finds as provided in section 9 of this chapter that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or as a prerequisite to a work offer, the individual:

- (1) tested positive for drugs after a drug test given by a prospective employer; or
- (2) refused to submit to a drug test.

SECTION 3. IC 22-4-15-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) Notwithstanding any other provision of this article, an individual who is otherwise eligible for benefits may be disqualified for benefits under section 2 of this chapter, if the individual:**

- (1) is found to have tested positive for drugs after a drug test is given by a prospective employer; or
- (2) refuses to submit to a drug test;

after an offer of employment has been made or as a prerequisite to an offer of employment by an employer.

(b) A prospective employer that:

- (1) receives a report of a positive drug test that has been given by or on behalf of the prospective employer; or
- (2) is aware that a prospective employee has refused to submit to a drug test that would be given by or on behalf of the employer;

shall immediately report the information in subdivision (1) or (2) to the department.

(c) Whenever the department receives a report under subsection (b) concerning an individual, the department shall provide written notice to the individual of the following:

- (1) That the department has received a report described in subsection (b) concerning the individual.
- (2) That the individual may be disqualified for benefits under this section as the result of the report.
- (3) That the individual may appeal the report by requesting a hearing as provided in IC 22-4-17-2.

(d) An individual who is disqualified for benefits under subsection (a) may resume eligibility for benefits upon submission of a negative drug test to the department.

(e) The department shall adopt rules under IC 4-22-2 to effectuate this section to the extent authorized by federal law. The rules may include, but are not limited to rules concerning:

- (1) the period of ineligibility for benefits between the time that

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**the drug test is given and a positive result is reported to the department;**

**(2) the manner in which a subsequent negative drug test may be submitted to the department after a positive drug test has been reported;**

**(3) any penalty against an employer that does not report the information in subsection (b), if other than that provided for in IC 22-4-34-4; and**

**(4) the manner by which a report of a false positive drug test may be appealed to the department."**

Page 2, line 17, delete ":" and insert "**the following**".

Page 2, delete lines 18 through 22.

Page 2, run in lines 17 through 23.

Page 2, line 25, delete "." and insert ":

- (1) Amphetamines.**
- (2) Cocaine.**
- (3) Opiates (2,000 ng/ml).**
- (4) PCP.**
- (5) THC.**

**(g) The department may not deny benefits to an otherwise eligible individual based on the individual's failure or refusal to sign the affidavit described in subsection (f). An initial claim for benefits under this article and an affidavit described in subsection (f) must contain a clear and conspicuous statement that an otherwise eligible individual may not be denied benefits based on the individual's failure or refusal to sign the affidavit described in subsection (f).**

SECTION 5. IC 22-4-17-2.5, AS AMENDED BY P.L.3-2008, SECTION 159, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2.5. (a) When an individual files an initial claim, the individual shall be advised of the following:

- (1) Unemployment compensation is subject to federal, state, and local income taxes.
- (2) Requirements exist concerning estimated tax payments.
- (3) ~~After December 31, 1996,~~ The individual may elect to have income taxes withheld from the individual's payment of unemployment compensation. If an election is made, the department shall withhold federal income tax at the applicable rate provided in the Internal Revenue Code.
- (4) An individual is allowed to change an election made under this section.
- (b) Money withheld from unemployment compensation under this

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section shall remain in the unemployment fund until transferred to the federal taxing authority for payment of income taxes.

(c) The commissioner shall follow all procedures of the United States Department of Labor and the Internal Revenue Service concerning the withholding of income taxes.

(d) Money shall be deducted and withheld in accordance with the priorities established in regulations developed by the commissioner.

**(e) In addition to the information contained in subsection (a), an individual filing an initial claim shall be advised that the individual may be disqualified for benefits if the individual:**

**(1) is found to have a positive drug test after a drug test is given by a prospective employer; or**

**(2) refuses to submit to a drug test;**

**after an offer of employment has been made or as a prerequisite to an offer of employment by the employer, as provided in IC 22-4-15-9."**

Renumber all SECTIONS consecutively.

(Reference is to SB 86 as printed January 13, 2011.)

TALLIAN

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 86, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-4-2-34, AS AMENDED BY P.L.175-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 34. (a) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "extended benefit period" means a period which begins with the third week after a week for which there is a state "on" indicator and ends with the later of the following:

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

(2) The thirteenth consecutive week of such period.

(b) However, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a



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prior extended benefit period which was in effect with respect to this state.

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

- (1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years; and
- (2) equaled or exceeded five percent (5%).

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

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

- (1) the average rate of total unemployment in Indiana, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of the week, equals or exceeds six and five-tenths percent (6.5%); and
- (2) the average rate of total unemployment in Indiana, seasonally adjusted, as determined by the United States Secretary of Labor, for the three (3) month period referred to in subdivision (1) equals or exceeds one hundred ten percent (110%) of the average for either or both of the corresponding three (3) month periods ending in the two (2) preceding calendar years.

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

(e) There is a state "off" indicator for this state for a week if the

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commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the requirements of subsection (c) have not been met.

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

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

(2) the average monthly employment covered under this article for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period.

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

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

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entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero **(0)**) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(i) "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit period which begin in an extended benefit period and, if the individual's benefit period ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period. For any weeks of unemployment beginning after February 17, 2009, and before January 1, ~~2010~~, **2012**, an individual's eligibility period (as described in Section 203(c) of the Federal-State Unemployment Compensation Act of 1970) is, for purposes of any determination of eligibility for extended compensation under state law, considered to include any week that begins:

- (1) after the date as of which the individual exhausts all rights to emergency unemployment compensation; and
- (2) during an extended benefit period that began on or before the date described in subdivision (1).

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

- (1) has received, prior to such week, all of the regular benefits including dependent's allowances that were available to the individual under this article or under the law of any other state (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. 8501 through 8525) in the individual's current benefit period that includes such week. However, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit period or although a nonmonetary decision denying benefits is pending, the individual may subsequently be determined to be entitled to added regular benefits;
- (2) may be entitled to regular benefits with respect to future weeks of unemployment but such benefits are not payable with respect to such week of unemployment by reason of seasonal limitations in any state unemployment insurance law; or
- (3) having had the individual's benefit period expire prior to such week, has no, or insufficient, wages on the basis of which the

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individual could establish a new benefit period that would include such week;

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

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

**(l) With respect to compensation for weeks of unemployment beginning after April 15, 2011, and ending on the later of December 31, 2011, or the last week authorized under federal law, in addition to the tests for a state "on" indicator under subsections (c) and (d), there is a state "on" indicator for a week if:**

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

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

**(n) With respect to compensation for weeks of unemployment beginning after April 15, 2011, and ending on the later of December 31, 2011, or the last week authorized under federal law, in addition to the tests for a state "on" indicator under subsections (c), (d), and (l) there is a state "on" indicator for a week if:**

- (1) the average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three (3) months for which data for all states are published before the

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close of the week equals or exceeds six and one-half percent (6.5%); and

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

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

Page 1, between lines 10 and 11, begin a new line blocked left and insert:

**"A drug test described in this section must be performed at a United States Department of Health and Human Services certified laboratory, with specimen collection performed by a collector certified by the United States Department of Transportation and the cost of the drug test paid by the employer.**

SECTION 3. IC 22-4-12-4, AS AMENDED BY P.L.175-2009, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Benefits shall be computed upon the basis of wage credits of an individual in the individual's base period. Wage credits shall be reported by the employer and credited to the individual in the manner prescribed by the board. With respect to initial claims filed for any week beginning on and after July 7, 1991, the maximum total amount of benefits payable to any eligible individual during any benefit period shall not exceed twenty-six (26) times the individual's weekly benefit, or twenty-eight percent (28%) of the individual's wage credits with respect to the individual's base period, whichever is less. If such maximum total amount of benefits is not a multiple of one dollar (\$1), it shall be computed to the next lower multiple of one dollar (\$1).

(b) Except as provided in subsection (d), the total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit period shall be fifty percent (50%) of the total amount of regular benefits (including dependents' allowances) which were payable to the individual under this article in the applicable benefit year, or thirteen (13) times the weekly benefit amount (including dependents' allowances) which was payable to the individual

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under this article for a week of total unemployment in the applicable benefit year, whichever is the lesser amount.

(c) This subsection applies to individuals who file a disaster unemployment claim or a state unemployment insurance claim after June 1, 1990, and before June 2, 1991, or during another time specified in another state statute. An individual is entitled to thirteen (13) weeks of additional benefits, as originally determined, if:

- (1) the individual has established:
  - (A) a disaster unemployment claim under the Stafford Disaster Relief and Emergency Assistance Act; or
  - (B) a state unemployment insurance claim as a direct result of a major disaster;
- (2) all regular benefits and all disaster unemployment assistance benefits:
  - (A) have been exhausted by the individual; or
  - (B) are no longer payable to the individual due to the expiration of the disaster assistance period; and
- (3) the individual remains unemployed as a direct result of the disaster.

(d) For purposes of this subsection, "high unemployment period" means a period during which an extended benefit period would be in effect if IC 22-4-2-34(d)(1) were applied by substituting "eight percent (8%)" for "six and five-tenths percent (6.5%)". Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year is equal to the least of the following amounts:

- (1) Eighty percent (80%) of the total amount of regular benefits that were payable to the eligible individual under this article in the applicable benefit year.
- (2) Twenty (20) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year.
- (3) Forty-six (46) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year, reduced by the regular unemployment compensation benefits paid (or deemed paid) during the benefit year.

This subsection expires on the later of December 5, 2009, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed Workers and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L.

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(e) For purposes of this subsection, "high unemployment period" means a period during which an extended benefit period would be in effect if IC 22-4-2-34(n)(1) were applied by substituting "eight percent (8%)" for "six and one-half percent (6.5%)". Effective with respect to weeks of unemployment beginning after April 15, 2011, and ending on the later of December 31, 2011, or the last week authorized under federal law, in a high unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year is equal to the lesser of the following amounts:

- (1) Eighty percent (80%) of the total amount of regular benefits that were payable to the eligible individual under this article in the applicable benefit year.
- (2) Twenty (20) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year."

Page 5, delete lines 6 through 42, begin a new paragraph and insert:

**"(j) An individual is considered to have refused an offer of suitable work under subsection (a) if an offer of work is withdrawn by an employer after an individual:**

- (1) tests positive for drugs after a drug test given on behalf of the prospective employer as a condition of an offer of employment; or**
- (2) refuses, without good cause, to submit to a drug test required by the prospective employer as a condition of an offer of employment.**

**(k) The department's records concerning the results of a drug test described in subsection (j) may not be admitted against a defendant in a criminal proceeding."**

Delete pages 6 through 7.

Page 8, delete lines 1 through 13, begin a new paragraph and insert: "SECTION 5. **An emergency is declared for this act.**"

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 86 as reprinted January 25, 2011.)

GUTWEIN, Chair

Committee Vote: yeas 8, nays 0.

ES 86—LS 6334/DI 96+

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 86 be amended to read as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE MARCH 1, 2011 (RETROACTIVE)]".

Replace the effective date in SECTION 3 with "[EFFECTIVE MARCH 1, 2011 (RETROACTIVE)]".

Page 5, line 11, delete "April 15," and insert "**March 1,**".

Page 5, line 30, delete "April 15," and insert "**March 1,**".

Page 8, line 10, delete "April 15," and insert "**March 1,**".

Page 11, between lines 41 and 42, begin a new paragraph and insert:  
**"(k) For purposes of this article, a drug test is not found to be positive unless:**

**(1) a second confirmation test:**

**(A) renders a positive result that has been performed by a SAMHSA (as defined in IC 22-10-15-3) certified laboratory on the same sample used for the first screen test using gas chromatography mass spectrometry for the purposes of confirming or refuting the screen test results; and**

**(B) has been reviewed by a licensed physician and:**

- (i) the laboratory results described in clause (A);**
- (ii) the individual's medical history; and**
- (iii) other relevant biomedical information;**

**confirm a positive result of the drug tests; or**

**(2) the individual who has submitted to the drug test has no valid medical reason for testing positive for the substance found in the drug test."**

Page 11, line 42, delete "(k)" and insert "(l)".

(Reference is to ESB 86 as printed April 8, 2011.)

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 86 be recommitted to a Committee of One, its sponsor, with specific instructions to amend as follows:

Page 5, line 12, delete "December 31, 2011, or the last week authorized under federal law," and insert "**December 10, 2011, or the**

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**week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5),".**

Page 5, line 31, delete "December 31, 2011, or the last week authorized under federal law," and insert "**December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5),".**

Page 8, line 10, delete "December 31, 2011, or" and insert "**December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5),".**

Page 8, line 11, delete "the last week authorized under federal law,".

(Reference is to ESB 86 as reprinted April 12, 2011.)

LEONARD

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred Engrossed Senate Bill 86, begs leave to report that said bill has been amended as directed.

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