



January 13, 2012

SENATE BILL No. 232

DIGEST OF SB 232 (Updated January 11, 2012 10:16 am - DI 102)

Citations Affected: IC 6-3.5; IC 22-4; noncode.

Synopsis: Unemployment compensation. Provides that a hearing scheduled before an administrative law judge or the unemployment insurance review board must be held with all interested parties and witnesses participating in person if any interested party objects to the hearing being scheduled as a telephone hearing. Requires the department of workforce development to amend its administrative rules concerning telephone hearings accordingly before December 31, 2012. Removes a provision that permits an individual to receive unemployment benefits when the individual voluntarily separates from employment to move to another labor market to join a spouse. Makes technical corrections and conforming amendments.

Effective: Upon passage; July 1, 2012.

Young R Michael

January 4, 2012, read first time and referred to Committee on Pensions and Labor.
January 12, 2012, reported favorably — Do Pass.

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SB 232—LS 6677/DI 102+



January 13, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 232

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 6-3.5-1.1-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) Except as
3 provided in subsections (b) through (c), if the county adjusted gross
4 income tax is not in effect during a county taxpayer's entire taxable
5 year, then the amount of county adjusted gross income tax that the
6 county taxpayer owes for that taxable year equals the product of:
7 (1) the amount of county adjusted gross income tax the county
8 taxpayer would owe if the tax had been imposed during the
9 county taxpayer's entire taxable year; multiplied by
10 (2) a fraction:
11 (A) The numerator of the fraction equals the number of days
12 during the county taxpayer's taxable year during which the
13 county adjusted gross income tax was in effect.
14 (B) The denominator of the fraction equals the total number of
15 days in the county taxpayer's taxable year.
16 (b) If a county taxpayer:
17 (1) is unemployed for a part of the taxpayer's taxable year;

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1 (2) was not discharged for just cause (as defined in
2 ~~IC 22-4-15-1(c)~~; **IC 22-4-15-1(d)**); and

3 (3) has no earned income for the part of the taxpayer's taxable
4 year that the tax was in effect;

5 the county taxpayer's adjusted gross income for the taxable year is
6 reduced by the amount of the taxpayer's earned income for the taxable
7 year.

8 (c) A taxpayer who qualifies under subsection (b) must file a claim
9 for a refund for the difference between the county adjusted gross
10 income tax owed, as determined under subsection (a), and the tax
11 owed, as determined under subsection (b). A claim for a refund must
12 be on a form approved by the department and include all supporting
13 documentation reasonably required by the department.

14 SECTION 2. IC 22-4-11-1, AS AMENDED BY P.L.175-2009,
15 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2012]: Sec. 1. (a) For the purpose of charging employers'
17 experience or reimbursable accounts with regular benefits paid
18 subsequent to July 3, 1971, to any eligible individual but except as
19 provided in IC 22-4-22 and subsection (f), such benefits paid shall be
20 charged proportionately against the experience or reimbursable
21 accounts of the individual's employers in the individual's base period
22 (on the basis of total wage credits established in such base period)
23 against whose accounts the maximum charges specified in this section
24 shall not have been previously made. Such charges shall be made in the
25 inverse chronological order in which the wage credits of such
26 individuals were established. However, when an individual's claim has
27 been computed for the purpose of determining the individual's regular
28 benefit rights, maximum regular benefit amount, and the proportion of
29 such maximum amount to be charged to the experience or reimbursable
30 accounts of respective chargeable employers in the base period, the
31 experience or reimbursable account of any employer charged with
32 regular benefits paid shall not be credited or recredited with any
33 portion of such maximum amount because of any portion of such
34 individual's wage credits remaining uncharged at the expiration of the
35 individual's benefit period. The maximum so charged against the
36 account of any employer shall not exceed twenty-eight percent (28%)
37 of the total wage credits of such individual with each such employer
38 with which wage credits were established during such individual's base
39 period. Benefits paid under provisions of IC 22-4-22-3 in excess of the
40 amount that the claimant would have been monetarily eligible for under
41 other provisions of this article shall be paid from the fund and not
42 charged to the experience account of any employer. This exception

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1 shall not apply to those employers electing to make payments in lieu of
 2 contributions who shall be charged for the full amount of regular
 3 benefit payments and the part of benefits not reimbursed by the federal
 4 government under the Federal-State Extended Unemployment
 5 Compensation Act of 1970 that are attributable to service in their
 6 employ. Irrespective of the twenty-eight percent (28%) maximum
 7 limitation provided for in this section, the part of benefits not
 8 reimbursed by the federal government under the Federal-State
 9 Extended Unemployment Compensation Act of 1970 paid to an eligible
 10 individual based on service with a governmental entity of this state or
 11 its political subdivisions shall be charged to the experience or
 12 reimbursable accounts of the employers, and the part of benefits not
 13 reimbursed by the federal government under the Federal-State
 14 Extended Unemployment Compensation Act of 1970 paid to an eligible
 15 individual shall be charged to the experience or reimbursable accounts
 16 of the individual's employers in the individual's base period, other than
 17 governmental entities of this state or its political subdivisions, in the
 18 same proportion and sequence as are provided in this section for
 19 regular benefits paid. Additional benefits paid under IC 22-4-12-4(c)
 20 and benefits paid under ~~IC 22-4-15-1(c)(8)~~ **IC 22-4-15-1(c)(7)** shall:

21 (1) be paid from the fund; and

22 (2) not be charged to the experience account or the reimbursable
 23 account of any employer.

24 (b) If the aggregate of wages paid to an individual by two (2) or
 25 more employers during the same calendar quarter exceeds the
 26 maximum wage credits (as defined in IC 22-4-4-3) then the experience
 27 or reimbursable account of each such employer shall be charged in the
 28 ratio which the amount of wage credits from such employer bears to the
 29 total amount of wage credits during the base period.

30 (c) When wage records show that an individual has been employed
 31 by two (2) or more employers during the same calendar quarter of the
 32 base period but do not indicate both that such employment was
 33 consecutive and the order of sequence thereof, then and in such cases
 34 it shall be deemed that the employer with whom the individual
 35 established a plurality of wage credits in such calendar quarter is the
 36 most recent employer in such quarter and its experience or
 37 reimbursable account shall be first charged with benefits paid to such
 38 individual. The experience or reimbursable account of the employer
 39 with whom the next highest amount of wage credits were established
 40 shall be charged secondly and the experience or reimbursable accounts
 41 of other employers during such quarters, if any, shall likewise be
 42 charged in order according to plurality of wage credits established by



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- 1 such individual.
- 2 (d) Except as provided in subsection (f), if an individual:
- 3 (1) voluntarily leaves an employer without good cause in
4 connection with the work; or
- 5 (2) is discharged from an employer for just cause;
- 6 wage credits earned with the employer from whom the employee has
7 separated under these conditions shall be used to compute the
8 claimant's eligibility for benefits, but charges based on such wage
9 credits shall be paid from the fund and not charged to the experience
10 account of any employer. However, this exception shall not apply to
11 those employers who elect to make payments in lieu of contributions,
12 who shall be charged for all benefit payments which are attributable to
13 service in their employ.
- 14 (e) Any nonprofit organization which elects to make payments in
15 lieu of contributions into the unemployment compensation fund as
16 provided in this article is not liable to make the payments with respect
17 to the benefits paid to any individual whose base period wages include
18 wages for previously uncovered services as defined in IC 22-4-4-4, nor
19 is the experience account of any other employer liable for charges for
20 benefits paid the individual to the extent that the unemployment
21 compensation fund is reimbursed for these benefits pursuant to Section
22 121 of P.L.94-566. Payments which otherwise would have been
23 chargeable to the reimbursable or contributing employers shall be
24 charged to the fund.
- 25 (f) If an individual:
- 26 (1) earns wages during the individual's base period through
27 employment with two (2) or more employers concurrently;
- 28 (2) is separated from work by one (1) of the employers for reasons
29 that would not result in disqualification under IC 22-4-15-1; and
- 30 (3) continues to work for one (1) or more of the other employers
31 after the end of the base period and continues to work during the
32 applicable benefit year on substantially the same basis as during
33 the base period;
- 34 wage credits earned with the base period employers shall be used to
35 compute the claimant's eligibility for benefits, but charges based on the
36 wage credits from the employer who continues to employ the individual
37 shall be charged to the experience or reimbursable account of the
38 separating employer.
- 39 (g) Subsection (f) does not affect the eligibility of a claimant who
40 otherwise qualifies for benefits nor the computation of benefits.
- 41 (h) Unemployment benefits paid shall not be charged to the
42 experience account of a base period employer when the claimant's

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1 unemployment from the employer was a direct result of the
 2 condemnation of property by a municipal corporation (as defined in
 3 IC 36-1-2-10), the state, or the federal government, a fire, a flood, or an
 4 act of nature, when at least fifty percent (50%) of the employer's
 5 employees, including the claimant, became unemployed as a result.
 6 This exception does not apply when the unemployment was an
 7 intentional result of the employer or a person acting on behalf of the
 8 employer.

9 SECTION 3. IC 22-4-14-2, AS AMENDED BY P.L.175-2009,
 10 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2012]: Sec. 2. (a) An unemployed individual is eligible to
 12 receive benefits with respect to any week only if the individual has:

- 13 (1) registered for work at an employment office or branch thereof
 14 or other agency designated by the commissioner within the time
 15 limits that the department by rule adopts; and
 16 (2) subsequently reported with the frequency and in the manner,
 17 either in person or in writing, that the department by rule adopts.

18 (b) Failure to comply with subsection (a) shall be excused by the
 19 commissioner or the commissioner's authorized representative upon a
 20 showing of good cause therefor. The department shall waive or alter the
 21 requirements of this section as to such types of cases or situations that
 22 compliance with such requirements would be oppressive or would be
 23 inconsistent with the purposes of this article.

24 (c) The department shall provide job counseling or training to an
 25 individual who remains unemployed for at least four (4) weeks. The
 26 manner and duration of the counseling shall be determined by the
 27 department.

28 (d) An individual who is receiving benefits as determined under
 29 ~~IC 22-4-15-1(c)(8)~~ **IC 22-4-15-1(c)(7)** is entitled to complete the
 30 reporting, counseling, or training that must be conducted in person at
 31 a one stop center selected by the individual. The department shall
 32 advise an eligible individual that this option is available.

33 (e) The department may waive the requirements of subsection (a)
 34 for a week only when one (1) of the following applies to an individual
 35 for that week:

- 36 (1) The individual is attending training or retraining approved by
 37 the department.
 38 (2) The individual is a job-attached worker with a specific recall
 39 date that is not more than sixty (60) days after the individual's
 40 separation date.
 41 (3) The individual is using:
 42 (A) a hiring service;

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- 1 (B) a referral service; or
 2 (C) another job placement service as determined by the
 3 department.
 4 (4) Any other situation exists for which the department considers
 5 requiring compliance by the individual with this section to be
 6 inconsistent with the purposes of this article.
 7 SECTION 4. IC 22-4-14-3, AS AMENDED BY P.L.110-2010,
 8 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2012]: Sec. 3. (a) An individual who is receiving benefits as
 10 determined under ~~IC 22-4-15-1(c)(8)~~ **IC 22-4-15-1(c)(7)** may restrict
 11 the individual's availability because of the individual's need to address
 12 the physical, psychological, or legal effects of being a victim of
 13 domestic or family violence (as defined in IC 31-9-2-42).
 14 (b) An unemployed individual shall be eligible to receive benefits
 15 with respect to any week only if the individual:
 16 (1) is physically and mentally able to work;
 17 (2) is available for work;
 18 (3) is found by the department to be making an effort to secure
 19 full-time work; and
 20 (4) participates in reemployment services, such as job search
 21 assistance services, if the individual has been determined to be
 22 likely to exhaust regular benefits and to need reemployment
 23 services under a profiling system established by the department,
 24 unless the department determines that:
 25 (A) the individual has completed the reemployment services;
 26 or
 27 (B) failure by the individual to participate in or complete the
 28 reemployment services is excused by the director under
 29 IC 22-4-14-2(b).
 30 The term "effort to secure full-time work" shall be defined by the
 31 department through rule which shall take into consideration whether
 32 such individual has a reasonable assurance of reemployment and, if so,
 33 the length of the prospective period of unemployment. However, if an
 34 otherwise eligible individual is unable to work or unavailable for work
 35 on any normal work day of the week the individual shall be eligible to
 36 receive benefits with respect to such week reduced by one-third (1/3)
 37 of the individual's weekly benefit amount for each day of such inability
 38 to work or unavailability for work.
 39 (c) For the purpose of this article, unavailability for work of an
 40 individual exists in, but is not limited to, any case in which, with
 41 respect to any week, it is found:
 42 (1) that such individual is engaged by any unit, agency, or

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1 instrumentality of the United States, in charge of public works or
 2 assistance through public employment, or any unit, agency, or
 3 instrumentality of this state, or any political subdivision thereof,
 4 in charge of any public works or assistance through public
 5 employment;

6 (2) that such individual is in full-time active military service of
 7 the United States, or is enrolled in civilian service as a
 8 conscientious objector to military service;

9 (3) that such individual is suspended for misconduct in
 10 connection with the individual's work; or

11 (4) that such individual is in attendance at a regularly established
 12 public or private school during the customary hours of the
 13 individual's occupation or is in any vacation period intervening
 14 between regular school terms during which the individual is a
 15 student. However, this subdivision does not apply to any
 16 individual who is attending a regularly established school, has
 17 been regularly employed and upon becoming unemployed makes
 18 an effort to secure full-time work and is available for suitable
 19 full-time work with the individual's last employer, or is available
 20 for any other full-time employment deemed suitable.

21 (d) Notwithstanding any other provisions in this section or
 22 IC 22-4-15-2, no otherwise eligible individual shall be denied benefits
 23 for any week because the individual is in training with the approval of
 24 the department, nor shall such individual be denied benefits with
 25 respect to any week in which the individual is in training with the
 26 approval of the department by reason of the application of the
 27 provisions of this section with respect to the availability for work or
 28 active search for work or by reason of the application of the provisions
 29 of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept,
 30 suitable work. The department shall by rule prescribe the conditions
 31 under which approval of such training will be granted.

32 (e) Notwithstanding subsection (b), (c), or (d), or IC 22-4-15-2, an
 33 otherwise eligible individual shall not be denied benefits for any week
 34 or determined not able, available, and actively seeking work, because
 35 the individual is responding to a summons for jury service. The
 36 individual shall:

37 (1) obtain from the court proof of the individual's jury service;
 38 and

39 (2) provide to the department, in the manner the department
 40 prescribes by rule, proof of the individual's jury service.

41 SECTION 5. IC 22-4-15-1, AS AMENDED BY P.L.175-2009,
 42 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2012]: Sec. 1. (a) With respect to benefit periods established
 2 on and after July 6, 1980, an individual who has voluntarily left the
 3 individual's most recent employment without good cause in connection
 4 with the work or who was discharged from the individual's most recent
 5 employment for just cause is ineligible for waiting period or benefit
 6 rights for the week in which the disqualifying separation occurred and
 7 until the individual has earned remuneration in employment equal to
 8 or exceeding the weekly benefit amount of the individual's claim in
 9 each of eight (8) weeks. If the qualification amount has not been earned
 10 at the expiration of an individual's benefit period, the unearned amount
 11 shall be carried forward to an extended benefit period or to the benefit
 12 period of a subsequent claim.

13 (b) When it has been determined that an individual has been
 14 separated from employment under disqualifying conditions as outlined
 15 in this section, the maximum benefit amount of the individual's current
 16 claim, as initially determined, shall be reduced by an amount
 17 determined as follows:

18 (1) For the first separation from employment under disqualifying
 19 conditions, the maximum benefit amount of the individual's
 20 current claim is equal to the result of:

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

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

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

26 (2) For the second separation from employment under
 27 disqualifying conditions, the maximum benefit amount of the
 28 individual's current claim is equal to the result of:

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

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

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

34 (3) For the third and any subsequent separation from employment
 35 under disqualifying conditions, the maximum benefit amount of
 36 the individual's current claim is equal to the result of:

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

39 (B) ninety percent (90%);

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

42 (c) The disqualifications provided in this section shall be subject to

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- 1 the following modifications:
- 2 (1) An individual shall not be subject to disqualification because
- 3 of separation from the individual's employment if:
- 4 (A) the individual left to accept with another employer
- 5 previously secured permanent full-time work which offered
- 6 reasonable expectation of continued covered employment and
- 7 betterment of wages or working conditions and thereafter was
- 8 employed on said job;
- 9 (B) having been simultaneously employed by two (2)
- 10 employers, the individual leaves one (1) such employer
- 11 voluntarily without good cause in connection with the work
- 12 but remains in employment with the second employer with a
- 13 reasonable expectation of continued employment; or
- 14 (C) the individual left to accept recall made by a base period
- 15 employer.
- 16 (2) An individual whose unemployment is the result of medically
- 17 substantiated physical disability and who is involuntarily
- 18 unemployed after having made reasonable efforts to maintain the
- 19 employment relationship shall not be subject to disqualification
- 20 under this section for such separation.
- 21 (3) An individual who left work to enter the armed forces of the
- 22 United States shall not be subject to disqualification under this
- 23 section for such leaving of work.
- 24 (4) An individual whose employment is terminated under the
- 25 compulsory retirement provision of a collective bargaining
- 26 agreement to which the employer is a party, or under any other
- 27 plan, system, or program, public or private, providing for
- 28 compulsory retirement and who is otherwise eligible shall not be
- 29 deemed to have left the individual's work voluntarily without
- 30 good cause in connection with the work. However, if such
- 31 individual subsequently becomes reemployed and thereafter
- 32 voluntarily leaves work without good cause in connection with the
- 33 work, the individual shall be deemed ineligible as outlined in this
- 34 section.
- 35 (5) An otherwise eligible individual shall not be denied benefits
- 36 for any week because the individual is in training approved under
- 37 Section 236(a)(1) of the Trade Act of 1974, nor shall the
- 38 individual be denied benefits by reason of leaving work to enter
- 39 such training, provided the work left is not suitable employment,
- 40 or because of the application to any week in training of provisions
- 41 in this law (or any applicable federal unemployment
- 42 compensation law), relating to availability for work, active search

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1 for work, or refusal to accept work. For purposes of this
2 subdivision, the term "suitable employment" means with respect
3 to an individual, work of a substantially equal or higher skill level
4 than the individual's past adversely affected employment (as
5 defined for purposes of the Trade Act of 1974), and wages for
6 such work at not less than eighty percent (80%) of the individual's
7 average weekly wage as determined for the purposes of the Trade
8 Act of 1974.

9 (6) An individual is not subject to disqualification because of
10 separation from the individual's employment if:

- 11 (A) the employment was outside the individual's labor market;
- 12 (B) the individual left to accept previously secured full-time
13 work with an employer in the individual's labor market; and
- 14 (C) the individual actually became employed with the
15 employer in the individual's labor market.

16 ~~(7) An individual who, but for the voluntary separation to move~~
17 ~~to another labor market to join a spouse who had moved to that~~
18 ~~labor market, shall not be disqualified for that voluntary~~
19 ~~separation, if the individual is otherwise eligible for benefits.~~
20 ~~Benefits paid to the spouse whose eligibility is established under~~
21 ~~this subdivision shall not be charged against the employer from~~
22 ~~whom the spouse voluntarily separated.~~

23 (8) (7) An individual shall not be subject to disqualification if the
24 individual voluntarily left employment or was discharged due to
25 circumstances directly caused by domestic or family violence (as
26 defined in IC 31-9-2-42). An individual who may be entitled to
27 benefits based on this modification may apply to the office of the
28 attorney general under IC 5-26.5 to have an address designated by
29 the office of the attorney general to serve as the individual's
30 address for purposes of this article.

31 As used in this subsection, "labor market" means the area surrounding
32 an individual's permanent residence, outside which the individual
33 cannot reasonably commute on a daily basis. In determining whether
34 an individual can reasonably commute under this subdivision, the
35 department shall consider the nature of the individual's job.

36 (d) "Discharge for just cause" as used in this section is defined to
37 include but not be limited to:

- 38 (1) separation initiated by an employer for falsification of an
39 employment application to obtain employment through
40 subterfuge;
- 41 (2) knowing violation of a reasonable and uniformly enforced rule
42 of an employer, including a rule regarding attendance;

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- 1 (3) if an employer does not have a rule regarding attendance, an
- 2 individual's unsatisfactory attendance, if the individual cannot
- 3 show good cause for absences or tardiness;
- 4 (4) damaging the employer's property through willful negligence;
- 5 (5) refusing to obey instructions;
- 6 (6) reporting to work under the influence of alcohol or drugs or
- 7 consuming alcohol or drugs on employer's premises during
- 8 working hours;
- 9 (7) conduct endangering safety of self or coworkers;
- 10 (8) incarceration in jail following conviction of a misdemeanor or
- 11 felony by a court of competent jurisdiction; or
- 12 (9) any breach of duty in connection with work which is
- 13 reasonably owed an employer by an employee.

14 (e) To verify that domestic or family violence has occurred, an
 15 individual who applies for benefits under subsection ~~(c)(8)~~ **(c)(7)** shall
 16 provide one (1) of the following:

- 17 (1) A report of a law enforcement agency (as defined in
- 18 IC 10-13-3-10).
- 19 (2) A protection order issued under IC 34-26-5.
- 20 (3) A foreign protection order (as defined in IC 34-6-2-48.5).
- 21 (4) An affidavit from a domestic violence service provider
- 22 verifying services provided to the individual by the domestic
- 23 violence service provider.

24 SECTION 6. IC 22-4-15-2, AS AMENDED BY P.L.12-2011,
 25 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2012]: Sec. 2. (a) With respect to benefit periods established
 27 on and after July 3, 1977, an individual is ineligible for waiting period
 28 or benefit rights, or extended benefit rights, if the department finds that,
 29 being totally, partially, or part-totally unemployed at the time when the
 30 work offer is effective or when the individual is directed to apply for
 31 work, the individual fails without good cause:

- 32 (1) to apply for available, suitable work when directed by the
- 33 commissioner, the deputy, or an authorized representative of the
- 34 department of workforce development or the United States
- 35 training and employment service;
- 36 (2) to accept, at any time after the individual is notified of a
- 37 separation, suitable work when found for and offered to the
- 38 individual by the commissioner, the deputy, or an authorized
- 39 representative of the department of workforce development or the
- 40 United States training and employment service, or an employment
- 41 unit; or
- 42 (3) to return to the individual's customary self-employment when

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1 directed by the commissioner or the deputy.
2 (b) With respect to benefit periods established on and after July 6,
3 1980, the ineligibility shall continue for the week in which the failure
4 occurs and until the individual earns remuneration in employment
5 equal to or exceeding the weekly benefit amount of the individual's
6 claim in each of eight (8) weeks. If the qualification amount has not
7 been earned at the expiration of an individual's benefit period, the
8 unearned amount shall be carried forward to an extended benefit period
9 or to the benefit period of a subsequent claim.
10 (c) With respect to extended benefit periods established on and after
11 July 5, 1981, the ineligibility shall continue for the week in which the
12 failure occurs and until the individual earns remuneration in
13 employment equal to or exceeding the weekly benefit amount of the
14 individual's claim in each of four (4) weeks.
15 (d) If an individual failed to apply for or accept suitable work as
16 outlined in this section, the maximum benefit amount of the
17 individual's current claim, as initially determined, shall be reduced by
18 an amount determined as follows:
19 (1) For the first failure to apply for or accept suitable work, the
20 maximum benefit amount of the individual's current claim is
21 equal to the result of:
22 (A) the maximum benefit amount of the individual's current
23 claim, as initially determined; multiplied by
24 (B) seventy-five percent (75%);
25 rounded (if not already a multiple of one dollar (\$1)) to the next
26 higher dollar.
27 (2) For the second failure to apply for or accept suitable work, the
28 maximum benefit amount of the individual's current claim is
29 equal to the result of:
30 (A) the maximum benefit amount of the individual's current
31 claim determined under subdivision (1); multiplied by
32 (B) eighty-five percent (85%);
33 rounded (if not already a multiple of one dollar (\$1)) to the next
34 higher dollar.
35 (3) For the third and any subsequent failure to apply for or accept
36 suitable work, the maximum benefit amount of the individual's
37 current claim is equal to the result of:
38 (A) the maximum benefit amount of the individual's current
39 claim determined under subdivision (2); multiplied by
40 (B) ninety percent (90%);
41 rounded (if not already a multiple of one dollar (\$1)) to the next
42 higher dollar.

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- 1 (e) In determining whether or not any such work is suitable for an
- 2 individual, the department shall consider:
- 3 (1) the degree of risk involved to such individual's health, safety,
- 4 and morals;
- 5 (2) the individual's physical fitness and prior training and
- 6 experience;
- 7 (3) the individual's length of unemployment and prospects for
- 8 securing local work in the individual's customary occupation; and
- 9 (4) the distance of the available work from the individual's
- 10 residence.

11 However, work under substantially the same terms and conditions
 12 under which the individual was employed by a base-period employer,
 13 which is within the individual's prior training and experience and
 14 physical capacity to perform, shall be considered to be suitable work
 15 unless the claimant has made a bona fide change in residence which
 16 makes such offered work unsuitable to the individual because of the
 17 distance involved. During the fifth through the eighth consecutive week
 18 of claiming benefits, work is not considered unsuitable solely because
 19 the work pays not less than ninety percent (90%) of the individual's
 20 prior weekly wage. After eight (8) consecutive weeks of claiming
 21 benefits, work is not considered unsuitable solely because the work
 22 pays not less than eighty percent (80%) of the individual's prior weekly
 23 wage. However, work is not considered suitable under this section if
 24 the work pays less than Indiana's minimum wage as determined under
 25 IC 22-2-2. For an individual who is subject to section ~~†(e)(8)~~ **(1)(c)(7)**
 26 of this chapter, the determination of suitable work for the individual
 27 must reasonably accommodate the individual's need to address the
 28 physical, psychological, legal, and other effects of domestic or family
 29 violence.

- 30 (f) Notwithstanding any other provisions of this article, no work
- 31 shall be considered suitable and benefits shall not be denied under this
- 32 article to any otherwise eligible individual for refusing to accept new
- 33 work under any of the following conditions:
- 34 (1) If the position offered is vacant due directly to a strike,
- 35 lockout, or other labor dispute.
- 36 (2) If the remuneration, hours, or other conditions of the work
- 37 offered are substantially less favorable to the individual than
- 38 those prevailing for similar work in the locality.
- 39 (3) If as a condition of being employed the individual would be
- 40 required to join a company union or to resign from or refrain from
- 41 joining a bona fide labor organization.
- 42 (4) If as a condition of being employed the individual would be

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

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1 (2) refuses, without good cause, to submit to a drug test required
 2 by the prospective employer as a condition of an offer of
 3 employment.
 4 (k) For purposes of this article, a drug test is not found to be positive
 5 unless:
 6 (1) a second confirmation test:
 7 (A) renders a positive result that has been performed by a
 8 SAMHSA (as defined in IC 22-10-15-3) certified laboratory
 9 on the same sample used for the first screen test using gas
 10 chromatography mass spectrometry for the purposes of
 11 confirming or refuting the screen test results; and
 12 (B) has been reviewed by a licensed physician and:
 13 (i) the laboratory results described in clause (A);
 14 (ii) the individual's medical history; and
 15 (iii) other relevant biomedical information;
 16 confirm a positive result of the drug tests; or
 17 (2) the individual who has submitted to the drug test has no valid
 18 medical reason for testing positive for the substance found in the
 19 drug test.
 20 (l) The department's records concerning the results of a drug test
 21 described in subsection (j) may not be admitted against a defendant in
 22 a criminal proceeding.
 23 SECTION 7. IC 22-4-17-2, AS AMENDED BY P.L.42-2011,
 24 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2012]: Sec. 2. (a) When an individual files an initial claim, the
 26 department shall promptly make a determination of the individual's
 27 status as an insured worker in a form prescribed by the department. A
 28 written notice of the determination of insured status shall be furnished
 29 to the individual promptly. Each such determination shall be based on
 30 and include a written statement showing the amount of wages paid to
 31 the individual for insured work by each employer during the
 32 individual's base period and shall include a finding as to whether such
 33 wages meet the requirements for the individual to be an insured
 34 worker, and, if so, the week ending date of the first week of the
 35 individual's benefit period, the individual's weekly benefit amount, and
 36 the maximum amount of benefits that may be paid to the individual for
 37 weeks of unemployment in the individual's benefit period. For the
 38 individual who is not insured, the notice shall include the reason for the
 39 determination. Unless the individual, within ten (10) days after such
 40 determination was mailed to the individual's last known address, or
 41 otherwise delivered to the individual, asks a hearing thereon before an
 42 administrative law judge, such determination shall be final and benefits

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1 shall be paid or denied in accordance therewith.

2 (b) The department shall promptly furnish each employer in the base
3 period whose experience or reimbursable account is potentially
4 chargeable with benefits to be paid to such individual with a notice in
5 writing of the employer's benefit liability. The notice shall contain the
6 date, the name and Social Security account number of the individual,
7 the ending date of the individual's base period, and the week ending
8 date of the first week of the individual's benefit period. The notice shall
9 further contain information as to the proportion of benefits chargeable
10 to the employer's experience or reimbursable account in ratio to the
11 earnings of such individual from such employer. Unless the employer
12 within ten (10) days after such notice of benefit liability was mailed to
13 the employer's last known address, or otherwise delivered to the
14 employer, asks a hearing thereon before an administrative law judge,
15 such determination shall be final and benefits paid shall be charged in
16 accordance therewith.

17 (c) An employing unit, including an employer, having knowledge
18 of any facts which may affect an individual's eligibility or right to
19 waiting period credits or benefits, shall notify the department of such
20 facts within ten (10) days after the mailing of notice that a former
21 employee has filed an initial or additional claim for benefits on a form
22 prescribed by the department.

23 (d) If, after the department determines that additional information
24 is necessary to make a determination under this chapter:
25 (1) the department makes a request in writing for additional
26 information from an employing unit, including an employer, on
27 a form prescribed by the department; and
28 (2) the employing unit fails to respond within ten (10) days after
29 the date the request is mailed to the employing unit;
30 the department shall make a decision with the information available.

31 (e) If:
32 (1) an employer appeals an original determination granting
33 benefits to a claimant and the determination is reversed on appeal;
34 and
35 (2) the decision to reverse the determination is at least in part
36 based on information that the department requested from the
37 employer under subsection (d), but which the employer failed to
38 provide within ten (10) days after the department's request was
39 mailed to the employer;
40 the employer's experience account shall be charged an amount equal to
41 fifty percent (50%) of the benefits paid to the employee to which the
42 employee was not entitled and for which the employer's experience

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1 account may be charged.

2 (f) If:

3 (1) the employer's experience account is charged under subsection
4 (e); and

5 (2) the employee repays all or a part of the benefits on which the
6 charge under subsection (e) is based;

7 the employer shall receive a credit to the employer's experience
8 account that is equal to the amount of the employee's repayment up to
9 fifty percent (50%) of the amount charged to the employer's experience
10 account under subsection (e).

11 (g) In addition to the foregoing determination of insured status by
12 the department, the deputy shall, throughout the benefit period,
13 determine the claimant's eligibility with respect to each week for which
14 the claimant claims waiting period credit or benefit rights, the validity
15 of the claimant's claim therefor, and the cause for which the claimant
16 left the claimant's work, or may refer such claim to an administrative
17 law judge who shall make the initial determination with respect thereto
18 in accordance with the procedure in section 3 of this chapter.

19 (h) In cases where the claimant's benefit eligibility or
20 disqualification is disputed, the department shall promptly notify the
21 claimant and the employer or employers directly involved or connected
22 with the issue raised as to the validity of such claim, the eligibility of
23 the claimant for waiting period credit or benefits, or the imposition of
24 a disqualification period or penalty, or the denial thereof, and of the
25 cause for which the claimant left the claimant's work, of such
26 determination and the reasons thereof.

27 (i) Except as otherwise hereinafter provided in this section regarding
28 parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant
29 or such employer, within ten (10) days after the notification required
30 by subsection (h), was mailed to the claimant's or the employer's last
31 known address or otherwise delivered to the claimant or the employer,
32 asks for a hearing before an administrative law judge thereon, such
33 decision shall be final and benefits shall be paid or denied in
34 accordance therewith.

35 (j) For a notice of disputed administrative determination or decision
36 mailed or otherwise delivered to the claimant or employer either of
37 whom is located in Alaska, Hawaii, or Puerto Rico, unless the claimant
38 or employer, within fifteen (15) days after the notification required by
39 subsection (h), was mailed to the claimant's or employer's last known
40 address or otherwise delivered to the claimant or employer, asks for a
41 hearing before an administrative law judge thereon, such decision shall
42 be final and benefits shall be paid or denied in accordance therewith.



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1 (k) If a claimant or an employer requests a hearing under subsection
2 (i) or (j), the request therefor shall be filed with the department in
3 writing within the prescribed periods as above set forth in this section
4 and shall be in such form as the department may prescribe. In the event
5 a hearing is requested by an employer or the department after it has
6 been administratively determined that benefits should be allowed to a
7 claimant, entitled benefits shall continue to be paid to said claimant
8 unless said administrative determination has been reversed by a due
9 process hearing. Benefits with respect to any week not in dispute shall
10 be paid promptly regardless of any appeal.

11 (l) A person may not participate on behalf of the department in any
12 case in which the person is an interested party.

13 (m) Solely on the ground of obvious administrative error appearing
14 on the face of an original determination, and within the benefit year of
15 the affected claims, the commissioner, or a representative authorized
16 by the commissioner to act in the commissioner's behalf, may
17 reconsider and direct the deputy to revise the original determination so
18 as to correct the obvious error appearing therein. Time for filing an
19 appeal and requesting a hearing before an administrative law judge
20 regarding the determinations handed down pursuant to this subsection
21 shall begin on the date following the date of revision of the original
22 determination and shall be filed with the commissioner in writing
23 within the prescribed periods as above set forth in subsection (c).

24 (n) Notice to the employer and the claimant that the determination
25 of the department is final if a hearing is not requested shall be
26 prominently displayed on the notice of the determination which is sent
27 to the employer and the claimant.

28 (o) If an allegation of the applicability of ~~IC 22-4-15-1(c)(8)~~
29 **IC 22-4-15-1(c)(7)** is made by the individual at the time of the claim
30 for benefits, the department shall not notify the employer of the
31 claimant's current address or physical location.

32 SECTION 8. IC 22-4-17-8.5, AS AMENDED BY P.L.108-2006,
33 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 UPON PASSAGE]: Sec. 8.5. (a) As used in this section, "interested
35 party" has the meaning set forth in ~~646 IAC 3-12-1~~. **means any of the**
36 **following:**

- 37 (1) **The claimant who filed the claim for benefits.**
- 38 (2) **Any employer whose account may be affected by the**
- 39 **adjudication of the claim.**
- 40 (3) **Any employer in the claimant's base period.**
- 41 (4) **Any employer:**
- 42 (A) **who has made an offer of work to the claimant; or**



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(B) to whose employment the claimant has been furnished a referral.

(5) The claimant's last, separating employer prior to the filing of the claim.

(b) **Subject to subsection (c)**, an administrative law judge or the review board may hold a hearing under this chapter by telephone if any of the following conditions exist:

- (1) The claimant or the employer is not located in Indiana.
- (2) An interested party requests without an objection being filed as provided in ~~646 IAC 3-12-21~~ that the hearing be held by telephone.
- (3) An interested party cannot appear in person because of an illness or injury to the party.
- (4) In the case of a hearing before an administrative law judge, the administrative law judge determines without any interested party filing an objection as provided in ~~646 IAC 3-12-21~~ that a hearing by telephone is proper and just.
- (5) In the case of a hearing before the review board, the issue to be adjudicated does not require both parties to be present.
- (6) In the case of a hearing before the review board, the review board has determined that a hearing by telephone is proper and just.

(c) An interested party may object to a hearing being scheduled as a telephone hearing without giving a reason for the objection. If an interested party objects to a hearing being scheduled as a telephone hearing, the hearing shall be held with all interested parties and all witnesses participating in person and not by telephone.

SECTION 9. IC 22-4-19-6, AS AMENDED BY P.L.110-2010, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

- (1) open to inspection; and
- (2) subject to being copied;

by an authorized representative of the department at any reasonable time and as often as may be necessary. The department, the review board, or an administrative law judge may require from any employing unit any verified or unverified report, with respect to persons employed by it, which is considered necessary for the effective administration of this article.

(b) Except as provided in subsections (d) and (f), information

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1 obtained or obtained from any person in the administration of this
 2 article and the records of the department relating to the unemployment
 3 tax or the payment of benefits is confidential and may not be published
 4 or be open to public inspection in any manner revealing the individual's
 5 or the employing unit's identity, except in obedience to an order of a
 6 court or as provided in this section.

7 (c) A claimant or an employer at a hearing before an administrative
 8 law judge or the review board shall be supplied with information from
 9 the records referred to in this section to the extent necessary for the
 10 proper presentation of the subject matter of the appearance. The
 11 department may make the information necessary for a proper
 12 presentation of a subject matter before an administrative law judge or
 13 the review board available to an agency of the United States or an
 14 Indiana state agency.

15 (d) The department may release the following information:

16 (1) Summary statistical data may be released to the public.

17 (2) Employer specific information known as ES 202 data and data
 18 resulting from enhancements made through the business
 19 establishment list improvement project may be released to the
 20 Indiana economic development corporation only for the following
 21 purposes:

22 (A) The purpose of conducting a survey.

23 (B) The purpose of aiding the officers or employees of the
 24 Indiana economic development corporation in providing
 25 economic development assistance through program
 26 development, research, or other methods.

27 (C) Other purposes consistent with the goals of the Indiana
 28 economic development corporation and not inconsistent with
 29 those of the department, including the purposes of IC 5-28-6-7.

30 (3) Employer specific information known as ES 202 data and data
 31 resulting from enhancements made through the business
 32 establishment list improvement project may be released to the
 33 budget agency and the legislative services agency only for aiding
 34 the employees of the budget agency or the legislative services
 35 agency in forecasting tax revenues.

36 (4) Information obtained from any person in the administration of
 37 this article and the records of the department relating to the
 38 unemployment tax or the payment of benefits for use by the
 39 following governmental entities:

40 (A) department of state revenue; or

41 (B) state or local law enforcement agencies;

42 only if there is an agreement that the information will be kept

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1 confidential and used for legitimate governmental purposes.

2 (e) The department may make information available under
3 subsection (d)(1), (d)(2), or (d)(3) only:

4 (1) if:

5 (A) data provided in summary form cannot be used to identify
6 information relating to a specific employer or specific
7 employee; or

8 (B) there is an agreement that the employer specific
9 information released to the Indiana economic development
10 corporation, the budget agency, or the legislative services
11 agency will be treated as confidential and will be released only
12 in summary form that cannot be used to identify information
13 relating to a specific employer or a specific employee; and

14 (2) after the cost of making the information available to the
15 person requesting the information is paid under IC 5-14-3.

16 (f) In addition to the confidentiality provisions of subsection (b), the
17 fact that a claim has been made under ~~IC 22-4-15-1(c)(8)~~
18 **IC 22-4-15-1(c)(7)** and any information furnished by the claimant or
19 an agent to the department to verify a claim of domestic or family
20 violence are confidential. Information concerning the claimant's current
21 address or physical location shall not be disclosed to the employer or
22 any other person. Disclosure is subject to the following additional
23 restrictions:

24 (1) The claimant must be notified before any release of
25 information.

26 (2) Any disclosure is subject to redaction of unnecessary
27 identifying information, including the claimant's address.

28 (g) An employee:

29 (1) of the department who recklessly violates subsection (a), (c),
30 (d), (e), or (f); or

31 (2) of any governmental entity listed in subsection (d)(4) who
32 recklessly violates subsection (d)(4);

33 commits a Class B misdemeanor.

34 (h) An employee of the Indiana economic development corporation,
35 the budget agency, or the legislative services agency who violates
36 subsection (d) or (e) commits a Class B misdemeanor.

37 (i) An employer or agent of an employer that becomes aware that a
38 claim has been made under ~~IC 22-4-15-1(c)(8)~~ **IC 22-4-15-1(c)(7)**
39 shall maintain that information as confidential.

40 (j) The department may charge a reasonable processing fee not to
41 exceed two dollars (\$2) for each record that provides information about
42 an individual's last known employer released in compliance with a

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1 court order under subsection (b).
2 SECTION 10. [EFFECTIVE UPON PASSAGE] (a) Before
3 December 31, 2012, the department of workforce development
4 shall amend 646 IAC 5-10-3, 646 IAC 5-10-11, and 646
5 IAC 5-10-24 to:
6 (1) provide that an interested party may object to a hearing
7 being scheduled as a telephone hearing without giving a
8 reason for the objection; and
9 (2) require that a hearing be held with all interested parties
10 and all witnesses participating in person and not by telephone,
11 if an interested party objects to the hearing being scheduled
12 as a telephone hearing.
13 (b) This SECTION expires January 1, 2013.
14 SECTION 11. 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. 232, 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 232 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 8, Nays 2.

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