First Regular Session of the 119th General Assembly (2015)

HOUSE ENROLLED ACT No. 1186

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

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

SECTION 1. IC 22-4-10-4.5, AS ADDED BY P.L.2-2011, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4.5. (a) This section applies to a calendar year that begins after December 31, 2010, to an employer:

(1) that is subject to this article for wages paid during the calendar year;

(2) whose contribution rate for the calendar year was determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3; and

(3) that:

(A) has been subject to this article during the preceding thirty-six (36) consecutive calendar months; and

(B) has had a payroll in each of the three (3) preceding twelve (12) month periods;

if, during the calendar year, the state is required to pay interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321.

(b) In addition to the contributions determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3 for calendar year 2011, each employer shall pay an unemployment insurance surcharge that is equal to thirteen percent (13%) of the employer's contribution determined

under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3 for the calendar year.

(c) For a calendar year that begins after December 31, 2011, in which employers are required to pay the unemployment insurance surcharge described in subsection (b), the department shall determine, not later than January 31, the surcharge percentage for that year based on factors that include:

(1) the interest rate charged the state for the year determined under 42 U.S.C. 1322(b); and

(2) the state's outstanding loan balance to the federal unemployment account on January 1 of the year.

(d) The unemployment insurance surcharge described in subsection (b) is payable to the department quarterly at the same time as employer contributions are paid under section 1 of this chapter. Failure to pay the unemployment insurance surcharge as specified in this section is considered a delinquency under IC 22-4-11-2.

(e) The department:

(1) may use amounts received under this section to pay interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321; and

(2) shall deposit any amounts received under this section and not used for the purposes described in subdivision (1) in the unemployment insurance benefit fund established under IC 22-4-26.

(f) Amounts paid under this section and used as provided in subsection (e)(1) do not affect and may not be charged to the experience account of any employer. Amounts paid under this section and used as provided in subsection (e)(2) must be ~~credited to each employer's experience account in proportion to the amount the employer paid under this section during the preceding four (4) calendar quarters.~~ **subtracted from the total amount of benefits charged to the fund under IC 22-4-11-1 in determining each employer's share of those benefits under IC 22-4-11-2(e).**

SECTION 2. IC 22-4-11-2, AS AMENDED BY P.L.154-2013, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) Except as provided in IC 22-4-10-6 and IC 22-4-11.5, the department shall for each year determine the contribution rate applicable to each employer.

(b) The balance shall include contributions with respect to the period ending on the computation date and actually paid on or before July 31 immediately following the computation date and benefits

actually paid on or before the computation date and shall also include any voluntary payments made in accordance with IC 22-4-10-5 or IC 22-4-10-5.5 (repealed):

(1) for each calendar year, an employer's rate shall be determined in accordance with the rate schedules in section 3.3 or 3.5 of this chapter; and

(2) for each calendar year, an employer's rate shall be two and five-tenths percent (2.5%), except as otherwise provided in subsection (g) or IC 22-4-37-3, unless:

(A) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date;

(B) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date; and

(C) the employer has properly filed all required contribution and wage reports, and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors have been paid.

(c) In addition to the conditions and requirements set forth and provided in subsection (b)(2)(A), (b)(2)(B), and (b)(2)(C), an employer's rate is equal to the sum of the employer's contribution rate determined or estimated by the department under this article plus two percent (2%) unless all required contributions and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessor for periods before and including the computation date have been paid:

(1) within thirty-one (31) days following the computation date; or

(2) within ten (10) days after the department has given the employer a written notice by registered mail to the employer's last known address of:

(A) the delinquency; or

(B) failure to file the reports;

whichever is the later date. The board or the board's designee may waive the imposition of rates under this subsection if the board finds the employer's failure to meet the deadlines was for excusable cause. The department shall give written notice to the employer before this additional condition or requirement shall apply. An employer's rate under this subsection may not exceed twelve percent (12%).

(d) However, if the employer is the state or a political subdivision of the state or any instrumentality of a state or a political subdivision,

or any instrumentality which is wholly owned by the state and one (1) or more other states or political subdivisions, the employer may contribute at a rate of one and six-tenths percent (1.6%) until it has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date.

(e) On the computation date every employer who had taxable wages in the previous calendar year shall have the employer's experience account charged with the amount determined under the following formula:

STEP ONE: Divide:

(A) the employer's taxable wages for the preceding calendar year; by

(B) the total taxable wages for the preceding calendar year.

STEP TWO: Subtract:

(A) the amount described in IC 22-4-10-4.5(e)(2), if any; from

(B) the total amount of benefits charged to the fund under section 1 of this chapter.

STEP ~~TWO.~~ **THREE:** Multiply the quotient determined under STEP ONE by the ~~total amount of benefits charged to the fund under section 1 of this chapter.~~ **difference determined under STEP TWO.**

(f) One (1) percentage point of the rate imposed under subsection (c), or the amount of the employer's payment that is attributable to the increase in the contribution rate, whichever is less, shall be imposed as a penalty that is due and shall be deposited upon collection into the special employment and training services fund established under IC 22-4-25-1. The remainder of the contributions paid by an employer pursuant to the maximum rate shall be:

(1) considered a contribution for the purposes of this article; and

(2) deposited in the unemployment insurance benefit fund established under IC 22-4-26.

(g) Except as otherwise provided in IC 22-4-37-3, this subsection, instead of subsection (b)(2), applies to an employer in the construction industry. As used in the subsection, "construction industry" means business establishments whose proper primary classification in the current edition of the North American Industry Classification System Manual - United States, published by the National Technical Information Service of the United States Department of Commerce is 23 (construction). For each calendar year beginning after December 31, 2013, an employer's rate shall be equal to the lesser of four percent (4%) or the average of the contribution rates paid by all employers in

the construction industry subject to this article during the twelve (12) months preceding the computation date, unless:

(1) the employer has been subject to this article throughout the thirty-six (36) consecutive calendar months immediately preceding the computation date;

(2) there has been some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the computation date; and

(3) the employer has properly filed all required contribution and wage reports, and all contributions, penalties, and interest due and owing by the employer or the employer's predecessors have been paid.

SECTION 3. IC 22-4-13-1, AS AMENDED BY P.L.108-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) Whenever an individual receives benefits or extended benefits to which the individual is not entitled under:

(1) this article; or

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

the department shall establish that an overpayment has occurred and establish the amount of the overpayment. **For an overpayment described in subsection (e), the department has four (4) years from the date of the overpayment to establish that the overpayment occurred and the amount of the overpayment.**

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

(c) Any individual who knowingly:

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

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

as a result thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such amount, with interest at the rate of one-half percent (0.5%) per month, to the department for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article. ~~within the six (6) year period following the later of the date the department establishes that an overpayment has occurred or the date that the determination of an overpayment becomes final following the exhaustion of all appeals.~~

(d) Any individual who ~~for any reason other than misrepresentation or nondisclosure as specified in subsection (c), has received any amount as benefits to which the individual is not entitled under this article or~~ **fails to report wages received during a week in which**

benefits were paid or because of the subsequent receipt of income deductible from benefits which is allocable to the week or weeks for which ~~such~~ benefits were paid ~~becomes~~ **and as a result is** not entitled to such benefits under this article shall be liable to repay such amount to the department for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article. ~~within the three (3) year period following the later of the date the department establishes that the overpayment occurred or the date that the determination that an overpayment occurred becomes final following the exhaustion of all appeals.~~

(e) An individual who for any reason not described in subsection (c) or (d) has received any amount as benefits to which the individual is not entitled under this article is liable to repay that amount to the department for the unemployment insurance benefit fund or to have that amount deducted from any benefits otherwise payable to the individual under this article.

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

~~(f)~~ **(g)** Where it is finally determined by a deputy, an administrative law judge, the review board, or a court of competent jurisdiction that an individual has received benefits to which the individual is not entitled under this article, the department shall relieve the affected employer's experience account of any benefit charges directly resulting from such overpayment, **except as provided under IC 22-4-11-1.5.** However, an employer's experience account will not be relieved of the charges resulting from an overpayment of benefits which has been created by a retroactive payment by such employer directly or indirectly to the claimant for a period during which the claimant claimed and was paid benefits unless the employer reports such payment by the end of the calendar quarter following the calendar quarter in which the payment was made or unless and until the overpayment has been collected. Those employers electing to make payments in lieu of contributions shall not have their account relieved as the result of any overpayment unless and until such overpayment has been repaid to the unemployment insurance benefit fund.

~~(g)~~ **(h)** Where any individual is liable to repay any amount to the

department for the unemployment insurance benefit fund for the restitution of benefits to which the individual is not entitled under this article, the amount due may be collectible without interest, except as otherwise provided in subsection (c), by civil action in the name of the state of Indiana, on relation of the department, which remedy by civil action shall be in addition to all other existing remedies and to the methods for collection provided in this article.

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

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

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

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

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

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

SECTION 4. IC 22-4-13-4 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 4. (a) This section applies to an individual:~~

~~(1) for whom the department has established an overpayment by a final written determination under section 1(a) or 1(b) of this chapter; and~~

~~(2) whose overpayment amount that is due and payable equals or exceeds:~~

~~(A) the individual's weekly benefit amount; multiplied by~~

~~(B) four (4).~~

~~(b) Notwithstanding any other law and subject to subsection (c), an individual is entitled to repay the established amount of an overpayment over a period:~~

~~(1) beginning on the date the determination of the amount of the overpayment is final; and~~

~~(2) ending on a date not later than the date occurring thirty-six (36) months after the date specified in subdivision (1).~~

~~(c) An individual to whom this section applies may repay an overpayment over time as provided in subsection (b) not more than once during the individual's lifetime.~~

SECTION 5. IC 22-4-13.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 13.3. Administrative Withholding for Benefit

Overpayments

Sec. 1. Whenever:

(1) the department establishes an overpayment for an individual under IC 22-4-13-1(c) or IC 22-4-13-1(d); and

(2) the overpayment becomes final following the exhaustion of all appeals;

the department may, in addition to any other manner of collecting the overpayment provided by law, require each employer of an individual for whom an overpayment is established to withhold amounts from the individual's income and pay those amounts to the department in accordance with this chapter.

Sec. 2. (a) The department shall provide a notice to an individual who is subject to withholding under section 1 of this chapter.

(b) The notice provided under subsection (a) must contain the following:

(1) That the individual's income will be withheld.

(2) That a notice to withhold the individual's income applies to all current and subsequent employers.

(3) That a notice to withhold income will be provided to each of the individual's employers and will include the information listed in section 3 of this chapter.

(4) That the individual may contest the withholding and assert exemptions from withholding by requesting an administrative review.

(5) The grounds and procedures for the individual to contest the withholding.

Sec. 3. (a) The department shall provide a notice to withhold income to each employer of an individual who is subject to withholding under section 1 of this chapter.

(b) A notice to withhold income provided under subsection (a) is binding on the employer and must contain the following:

(1) The Social Security number of the individual who is subject to withholding.

(2) The total amount to be withheld from the individual's income, including any interest, penalties, or assessments accrued under this article.

(3) An explanation of an employer's duties under section 4 of this chapter upon the employer's receipt of the notice to withhold income.

(4) A description of the limitations on income withholding established by section 7(d) of this chapter.

(5) A description of:

(A) the prohibition established under section 5 of this chapter against an employer using income withholding as the basis for refusing to hire, discharging, or taking disciplinary action against an individual; and

(B) the penalties established under section 6 of this chapter for an employer that refuses to withhold income or knowingly misrepresents an employee's income.

Sec. 4. (a) An employer that receives a notice to withhold income under section 3 of this chapter shall do the following:

(1) Verify the individual's employment to the department.

(2) Withhold from the income due to the individual each pay period an amount:

(A) determined in accordance with; and

(B) subject to the limitations of and priority established by; IC 24-4.5-5-105 in the same manner as a garnishment. An income withholding under this chapter is not an assignment of wages under IC 22-2-6.

(3) Begin withholding the amount determined under subdivision (2) from the individual's income beginning with the first pay period that occurs not later than fourteen (14) days after the date the employer receives the notice sent under section 3 of this chapter.

(4) Remit the amount withheld under subdivision (2) to the department by check or electronic payment (as defined by IC 5-27-2-3) not later than seven (7) days after the date of each regularly scheduled pay day.

(5) Continue withholding under this section until:

(A) the department notifies the employer to discontinue the withholding; or

(B) the full amount required to be paid to the department has been paid, as indicated by a written statement to the employer from the department.

(6) Notify the department, if the individual subject to withholding terminates employment, including the individual's last known address and the name of any new employer, if known.

(b) An employer that is required to withhold income under subsection (a)(2) may collect a fee determined under IC 24-4.5-5-105(5) in the same manner as a collection fee allowed for making a garnishment. A fee collected under this subsection is not an assignment of wages under IC 22-2-6.

Sec. 5. (a) An employer may not use the withholding of income to collect an overpayment to the department as a basis for:

(1) refusing to hire a potential employee;

(2) discharging an employee; or

(3) taking disciplinary action against an employee.

(b) If:

(1) an employee reasonably believes that an employer took an action described in subsection (a); and

(2) the employee was adversely affected by the employer's action;

the employee may bring a suit against the employer in a court with jurisdiction.

(c) If a court determines that an employer took an action described in subsection (a), the employer may be:

(1) ordered to hire or reinstate an employee who was adversely affected by the employer's action without loss of pay or benefits; and

(2) fined an amount not to exceed one thousand dollars ($1,000).

Sec. 6. (a) An employer that refuses to withhold income as required by this chapter or knowingly misrepresents the income of an employee:

(1) is liable to the department for the amount that the employer failed to withhold from an employee's income; and

(2) may be ordered to pay punitive damages to the department in an amount not to exceed one thousand dollars ($1,000) for each pay period the employer failed to withhold income as required or knowingly misrepresented the income of the employee.

(b) The department may institute a civil action in a court with jurisdiction requesting that the court direct the employer to appear and to show cause why the penalties described in this section should not be assessed.

(c) At the hearing on the order to show cause, the court, upon a finding that the employer refused to withhold income as required or knowingly misrepresented an employee's income:

(1) shall require the employer to pay the amount the employer failed or refused to withhold from the employee's income;

(2) may order the employer to provide accurate information concerning an employee's income;

(3) may assess against the employer punitive damages under subsection (a)(2); and

(4) may order the employer to otherwise comply with this chapter.

Sec. 7. (a) An employer that complies with a notice described in section 3 of this chapter that is regular on its face is not liable in any civil action for any conduct taken in compliance with the notice.

(b) An employer that complies with a notice described in section 3 of this chapter is discharged from liability to an employee for the part of the employee's income that was withheld in compliance with the notice.

(c) If a court issues an order to stay a withholding of income, the department is not liable in any civil action to an individual who is the subject of the income withholding for amounts withheld from the individual's income before the stay becomes effective.

(d) Administrative income withholdings issued under this chapter are subject to the limitations set forth in IC 24-4.5-5-105. A withholding under this chapter is not an assignment of wages under IC 22-2-6.

(e) The department may adopt rules under IC 4-22-2, including emergency rules in the manner provided under IC 4-22-2-37.1, to carry out the department's responsibilities under this chapter.

Sec. 8. (a) An individual who receives a notice under section 2 of this chapter may contest the withholding and assert exemptions by requesting, in writing, not later than fifteen (15) days after the date on the notice, an administrative hearing by an administrative law judge of the department.

(b) An administrative hearing under this section may be conducted in either of the following ways:

(1) As a written records or "paper" hearing conducted by review of written materials and other records.

(2) As a telephone or in person hearing conducted by review of written materials and testimony.

(c) An individual who contests an income withholding is entitled to:

(1) an opportunity to inspect and copy records relating to the overpayment;

(2) an opportunity to enter into a written agreement with the department to establish a schedule for repayment of the overpayment; and

(3) an opportunity for an administrative hearing conducted by an administrative law judge of the department.

(d) An individual may contest an income withholding on the

following grounds:

(1) That the existence, past due status, or the amount of the overpayment is incorrect.

(2) That the amount withheld was incorrectly calculated.

(3) That the overpayment is unenforceable as a matter of law.

(e) The department is not required to provide more than one (1) hearing based on the same grounds or objections. If:

(1) the department has already provided a hearing on the existence or the amount of the overpayment; and

(2) the employee does not have new evidence concerning the overpayment;

the department may not repeat the hearing on the existence or amount of the overpayment.

(f) The department's evidence concerning the existence, past due status, and amount of the overpayment is automatically admitted as evidence in the administrative hearing and must be considered by the administrative law judge.

SECTION 6. IC 22-4-14-5, AS AMENDED BY P.L.175-2009, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after July 1, 1995, but before January 1, 2010:

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at least one and one-quarter (1.25) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than one thousand six hundred fifty dollars ($1,650) and an aggregate in the four (4) calendar quarters of the individual's base period of not less than two thousand seven hundred fifty dollars ($2,750).

(b) As a further condition precedent to the payment of benefits to an individual with respect to a benefit year established on and after July 1, 1995, an insured worker may not receive benefits in a benefit year unless after the beginning of the immediately preceding benefit year during which the individual received benefits, the individual:

(1) performed insured work; ~~and earned wages in employment under IC 22-4-8 in an amount not less than the individual's weekly benefit amount established for the individual in the~~

~~preceding benefit year in each of eight (8) weeks.~~

(2) earned remuneration in employment in at least each of eight (8) weeks; and

(3) earned remuneration equal to or exceeding the product of the individual's weekly benefit amount multiplied by eight (8).

(c) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after January 1, 2010:

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of wages under IC 22-4-22-3) equal to at least one and five-tenths (1.5) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than two thousand five hundred dollars ($2,500) and a total amount in the four (4) calendar quarters of the individual's base period of not less than four thousand two hundred dollars ($4,200).

SECTION 7. IC 22-4-15-1, AS AMENDED BY P.L.121-2014, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) Regarding an individual's most recent separation from employment before filing an initial or additional claim for benefits, an individual who voluntarily left the employment without good cause in connection with the work or was discharged from the employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until:

(1) the individual has earned remuneration in employment in at least eight (8) weeks; and

(2) the remuneration earned equals or exceeds the product of the weekly benefit amount multiplied by eight (8).

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.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions 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 separation from employment under disqualifying conditions, 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 separation from employment under disqualifying conditions, 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 separation from employment under disqualifying conditions, 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 (2); multiplied by

(B) ninety percent (90%);

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

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily

unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

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

(A) the employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that

labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

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

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

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

(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;

(2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;

(3) if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance, if ~~the individual cannot show~~ good cause for absences or tardiness **is not established;**

(4) damaging the employer's property through willful negligence;

(5) refusing to obey instructions;

(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;

(7) conduct endangering safety of self or coworkers;

(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; or

(9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

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

(1) A report of a law enforcement agency (as defined in

IC 10-13-3-10).

(2) A protection order issued under IC 34-26-5.

(3) A foreign protection order (as defined in IC 34-6-2-48.5).

(4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

SECTION 8. IC 22-4-15-2, AS AMENDED BY P.L.121-2014, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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 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:

(1) remuneration in employment ~~equal to or exceeding the weekly benefit amount of the individual's claim~~ in **at least** each of eight (8) weeks; **and**

(2) remuneration equal to or exceeding the product of the individual's weekly benefit amount multiplied by eight (8).

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:

(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.

(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) 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.

SECTION 9. IC 22-4-35-2, AS AMENDED BY P.L.108-2006, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. All criminal actions for violations of this article shall be prosecuted by the prosecuting attorney, ~~of any county,~~ or with the assistance of the attorney general or a United States attorney, if requested by the commissioner, **in any county:**

(1) in which the employer has a place of business; ~~or~~

(2) in which the alleged violator resides; **or**

(3) if an offense is committed using the Internet or another computer network (as defined in IC 35-43-2-3):

(A) from which or to which access to the Internet or another computer network was made; or

(B) in which a computer, computer data, computer software, or computer network that was used to access the Internet or another computer network is located.

SECTION 10. IC 34-30-2-87.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 87.4. IC 22-4-13.3-7 (Concerning the withholding of overpaid unemployment benefits).**

SECTION 11. [EFFECTIVE JULY 1, 2015] **(a) The general assembly urges the legislative council to assign to an appropriate study commission or committee during the 2015 legislative interim the task of studying fraud and benefit overpayments occurring in the unemployment insurance program in Indiana.**

(b) If the appropriate commission or committee is assigned the topic described in subsection (a), the commission or committee shall issue to the legislative council a final report containing the commission's or committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6 not later than November 1, 2015.

(c) This SECTION expires January 1, 2016.

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____