

# SENATE BILL No. 392

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Work sharing unemployment benefits program. Establishes a work sharing unemployment insurance program. Requires an employer that desires to participate in the work sharing unemployment insurance program to submit a work sharing plan for approval by the commissioner of the department of workforce development. Establishes the work sharing benefit as equal to an affected employee's unemployment benefit reduced by a percentage equal to the percentage of the employee's normal weekly work hours that the employee works under the approved work sharing plan.

**Effective:** July 1, 2020.

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January 13, 2020, read first time and referred to Committee on Pensions and Labor.

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Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE BILL No. 392

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

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

1 SECTION 1. IC 22-4-15-1, AS AMENDED BY P.L.224-2017,  
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]: Sec. 1. (a) Regarding an individual's most recent  
4 separation from employment before filing an initial or additional claim  
5 for benefits, an individual who voluntarily left the employment without  
6 good cause in connection with the work or was discharged from the  
7 employment for just cause is ineligible for waiting period or benefit  
8 rights for the week in which the disqualifying separation occurred and  
9 until:  
10 (1) the individual has earned remuneration in employment in at  
11 least eight (8) weeks; and  
12 (2) the remuneration earned equals or exceeds the product of the  
13 weekly benefit amount multiplied by eight (8).  
14 If the qualification amount has not been earned at the expiration of an  
15 individual's benefit period, the unearned amount shall be carried  
16 forward to an extended benefit period or to the benefit period of a  
17 subsequent claim.



1 (b) When it has been determined that an individual has been  
2 separated from employment under disqualifying conditions as outlined  
3 in this section, the maximum benefit amount of the individual's current  
4 claim, as initially determined, shall be reduced by an amount  
5 determined as follows:

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

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

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

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

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

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

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

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

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

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

27 (B) ninety percent (90%);

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

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

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

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

39 (B) having been simultaneously employed by two (2)  
40 employers, the individual leaves one (1) such employer  
41 voluntarily without good cause in connection with the work  
42 but remains in employment with the second employer with a



- 1           reasonable expectation of continued employment; or  
2           (C) the individual left to accept recall made by a base period  
3           employer.
- 4           (2) An individual whose unemployment is the result of medically  
5           substantiated physical disability and who is involuntarily  
6           unemployed after having made reasonable efforts to maintain the  
7           employment relationship shall not be subject to disqualification  
8           under this section for such separation.
- 9           (3) An individual who left work to enter the armed forces of the  
10          United States shall not be subject to disqualification under this  
11          section for such leaving of work.
- 12          (4) An individual whose employment is terminated under the  
13          compulsory retirement provision of a collective bargaining  
14          agreement to which the employer is a party, or under any other  
15          plan, system, or program, public or private, providing for  
16          compulsory retirement and who is otherwise eligible shall not be  
17          deemed to have left the individual's work voluntarily without  
18          good cause in connection with the work. However, if such  
19          individual subsequently becomes reemployed and thereafter  
20          voluntarily leaves work without good cause in connection with the  
21          work, the individual shall be deemed ineligible as outlined in this  
22          section.
- 23          (5) An otherwise eligible individual shall not be denied benefits  
24          for any week because the individual is in training approved under  
25          Section 236(a)(1) of the Trade Act of 1974, nor shall the  
26          individual be denied benefits by reason of leaving work to enter  
27          such training, provided the work left is not suitable employment,  
28          or because of the application to any week in training of provisions  
29          in this law (or any applicable federal unemployment  
30          compensation law), relating to availability for work, active search  
31          for work, or refusal to accept work. For purposes of this  
32          subdivision, the term "suitable employment" means with respect  
33          to an individual, work of a substantially equal or higher skill level  
34          than the individual's past adversely affected employment (as  
35          defined for purposes of the Trade Act of 1974), and wages for  
36          such work at not less than eighty percent (80%) of the individual's  
37          average weekly wage as determined for the purposes of the Trade  
38          Act of 1974.
- 39          (6) An individual is not subject to disqualification because of  
40          separation from the individual's employment if:  
41                  (A) the employment was outside the individual's labor market;  
42                  (B) the individual left to accept previously secured full-time



- 1 work with an employer in the individual's labor market; and  
 2 (C) the individual actually became employed with the  
 3 employer in the individual's labor market.
- 4 (7) An individual who, but for the voluntary separation to move  
 5 to another labor market to join a spouse who had moved to that  
 6 labor market, shall not be disqualified for that voluntary  
 7 separation, if the individual is otherwise eligible for benefits.  
 8 Benefits paid to the spouse whose eligibility is established under  
 9 this subdivision shall not be charged against the employer from  
 10 whom the spouse voluntarily separated.
- 11 (8) An individual shall not be subject to disqualification if the  
 12 individual voluntarily left employment or was discharged due to  
 13 circumstances directly caused by domestic or family violence (as  
 14 defined in IC 31-9-2-42). An individual who may be entitled to  
 15 benefits based on this modification may apply to the office of the  
 16 attorney general under IC 5-26.5 to have an address designated by  
 17 the office of the attorney general to serve as the individual's  
 18 address for purposes of this article.
- 19 **(9) An individual who is an affected employee (as defined in**  
 20 **IC 22-4-44-2(1)) and is subject to the work sharing**  
 21 **unemployment insurance program under IC 22-4-44 is not**  
 22 **disqualified for participating in the work sharing**  
 23 **unemployment insurance program.**
- 24 As used in this subsection, "labor market" means the area surrounding  
 25 an individual's permanent residence, outside which the individual  
 26 cannot reasonably commute on a daily basis. In determining whether  
 27 an individual can reasonably commute under this subdivision, the  
 28 department shall consider the nature of the individual's job.
- 29 (d) "Discharge for just cause" as used in this section is defined to  
 30 include but not be limited to:
- 31 (1) separation initiated by an employer for falsification of an  
 32 employment application to obtain employment through  
 33 subterfuge;
  - 34 (2) knowing violation of a reasonable and uniformly enforced rule  
 35 of an employer, including a rule regarding attendance;
  - 36 (3) if an employer does not have a rule regarding attendance, an  
 37 individual's unsatisfactory attendance, if good cause for absences  
 38 or tardiness is not established;
  - 39 (4) damaging the employer's property through willful negligence;
  - 40 (5) refusing to obey instructions;
  - 41 (6) reporting to work under the influence of alcohol or drugs or  
 42 consuming alcohol or drugs on **the** employer's premises during



1 working hours;

2 (7) conduct endangering safety of self or coworkers;

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

5 (9) any breach of duty in connection with work which is  
6 reasonably owed an employer by an employee; or

7 (10) testing positive on a drug test under IC 16-27-2.5.

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

11 (1) A report of a law enforcement agency (as defined in  
12 IC 10-13-3-10).

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

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

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

18 SECTION 2. IC 22-4-44 IS ADDED TO THE INDIANA CODE AS  
19 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
20 1, 2020]:

21 **Chapter 44. Work Sharing Unemployment Insurance Program**

22 **Sec. 1. This chapter applies after June 30, 2020.**

23 **Sec. 2. The following definitions apply throughout this chapter:**

24 (1) "Affected employee" means an individual who has been  
25 continuously on the payroll of an affected unit for at least  
26 sixteen (16) months.

27 (2) "Affected unit" means a specific plant, department, shift,  
28 or other definable unit of an employing unit:

29 (A) that has at least two (2) employees; and

30 (B) to which an approved work sharing plan applies.

31 (3) "Approved work sharing plan" means a plan that satisfies  
32 the purpose set forth in section 3 of this chapter and has the  
33 approval of the commissioner.

34 (4) "Intermittent employment" means periodic intervals that  
35 are not continuous during which an individual works for an  
36 employing unit.

37 (5) "Normal weekly work hours" means the number of hours  
38 that a full-time or part-time employee in the affected unit  
39 works in a week when the unit is operating on a regular basis.

40 However, the number of hours in a week:

41 (A) may not exceed forty (40) hours; and

42 (B) does not include hours of overtime work.



1           **(6) "Part-time employment"** means that an individual works  
 2 in a position in a week for an employing unit in which the  
 3 number of scheduled work hours are normally less than the  
 4 number of scheduled work hours worked by a full-time  
 5 employee. The term does not include a worker who works in  
 6 a position that is:

7           (A) seasonal employment (as determined by the  
 8 department under IC 22-4-7-3(b));

9           (B) temporary employment; or

10          (C) intermittent employment.

11          **(7) "Payments in lieu of contributions"** has the meaning set  
 12 forth in IC 22-4-2-32.

13          **(8) "Work sharing benefit"** means a benefit payable to an  
 14 affected employee for work performed under an approved  
 15 work sharing plan, but does not include benefits that are  
 16 otherwise payable under this article.

17          **(9) "Work sharing employer"** means an employing unit for  
 18 which a work sharing plan has been approved.

19          **(10) "Work sharing plan"** means a plan of an employing unit  
 20 under which:

21           (A) normal weekly work hours of the affected employees  
 22 are reduced instead of a layoff of part or all of the affected  
 23 employees; and

24           (B) the affected employees share the work that remains  
 25 after the reduction.

26          **Sec. 3. The work sharing unemployment insurance program**  
 27 **seeks to:**

28           **(1) preserve the jobs of employees and the workforce of an**  
 29 **employer during lowered economic activity by a reduction in**  
 30 **work hours or workdays rather than by a layoff of some**  
 31 **employees while other employees continue their normal**  
 32 **weekly work hours or workdays; and**

33           **(2) ameliorate the adverse effect of reduction in business**  
 34 **activity by providing benefits for the part of the normal**  
 35 **weekly work hours or workdays in which an employee does**  
 36 **not work.**

37          **Sec. 4. (a) An employing unit that meets all the following**  
 38 **requirements is eligible to participate in the work sharing**  
 39 **unemployment insurance program established by this chapter:**

40           **(1) The employing unit is subject to this article for wages paid**  
 41 **during a calendar year.**

42           **(2) The employing unit's:**



- 1           (A) contribution rate for the calendar year; or  
 2           (B) payments in lieu of contributions;  
 3           are determined under IC 22-4-10, IC 22-4-11, IC 22-4-11.5, or  
 4           IC 22-4-37-3.  
 5           (3) The employing unit is not delinquent as determined under  
 6           IC 22-4-11-2.  
 7           (4) The employing unit had an experience account with a  
 8           credit balance on the latest computation date.  
 9           (b) An employing unit that:  
 10           (1) meets the eligibility requirements under subsection (a);  
 11           and  
 12           (2) wishes to participate in the work sharing unemployment  
 13           insurance program established by this chapter;  
 14           shall submit a written work sharing plan to the commissioner.  
 15           Sec. 5. (a) Not later than fifteen (15) calendar days after receipt  
 16           of a work sharing plan, the commissioner shall give written  
 17           approval or disapproval of the work sharing plan to the employing  
 18           unit.  
 19           (b) The decision of the commissioner to disapprove a work  
 20           sharing plan is final and may not be appealed.  
 21           (c) An employing unit may not submit a new work sharing plan  
 22           less than fifteen (15) calendar days after the date of the  
 23           commissioner's disapproval of a work sharing plan in accordance  
 24           with subsection (a).  
 25           Sec. 6. The commissioner shall approve a work sharing plan  
 26           that meets the following requirements:  
 27           (1) The work sharing plan must apply to the greater of:  
 28           (A) ten percent (10%) of the employees in an affected unit;  
 29           or  
 30           (B) two (2) employees in an affected unit.  
 31           (2) The normal weekly work hours of the affected employees  
 32           in the affected unit shall be reduced by at least ten percent  
 33           (10%), but the reduction may not exceed fifty percent (50%).  
 34           The reduction in normal weekly work hours must be spread  
 35           equally among all of the affected employees.  
 36           Sec. 7. (a) A work sharing plan must:  
 37           (1) identify the affected unit or units to which the work  
 38           sharing plan applies;  
 39           (2) state:  
 40           (A) the reason or reasons resulting in the reduction in  
 41           normal weekly work hours under section 6(2) of this  
 42           chapter;





- 1                   **(B) the expected duration of the reduction in normal**  
 2                   **weekly work hours under section 6(2) of this chapter; and**  
 3                   **(C) an estimate of the number of layoffs that will be**  
 4                   **averted by the employing unit's participation in a work**  
 5                   **sharing plan;**  
 6                   **(3) specify the effective date of the work sharing plan;**  
 7                   **(4) specify an expiration date that is not more than twelve (12)**  
 8                   **months after the effective date of the work sharing plan;**  
 9                   **(5) identify each employee in the affected unit by:**  
 10                   **(A) name;**  
 11                   **(B) Social Security number;**  
 12                   **(C) the normal weekly work hours of the employee;**  
 13                   **(D) the reductions in the number of hours and the amount**  
 14                   **of wages proposed for the employee by the work sharing**  
 15                   **plan; and**  
 16                   **(E) any other information the commissioner requires;**  
 17                   **(6) specify that the work sharing plan will not affect the fringe**  
 18                   **benefits of any employee in the affected unit, including:**  
 19                   **(A) health insurance for hospital, medical, dental, and**  
 20                   **similar services;**  
 21                   **(B) retirement benefits under benefit pension plans as**  
 22                   **defined in the federal Employee Retirement Income**  
 23                   **Security Act (29 U.S.C. 1001 et seq.);**  
 24                   **(C) holiday and vacation pay;**  
 25                   **(D) sick leave; and**  
 26                   **(E) other similar benefits that are incidents of**  
 27                   **employment;**  
 28                   **(7) certify that:**  
 29                   **(A) each affected employee has been continuously on the**  
 30                   **payroll of the employing unit for at least sixteen (16)**  
 31                   **months immediately before the date on which the**  
 32                   **employing unit submits the work sharing plan;**  
 33                   **(B) the total reduction in normal weekly work hours is in**  
 34                   **place of layoffs that would have:**  
 35                   **(i) affected at least the number of employees estimated in**  
 36                   **subdivision (2)(c); and**  
 37                   **(ii) resulted in an equivalent reduction in work hours;**  
 38                   **and**  
 39                   **(C) the work sharing plan will not serve as a subsidy of:**  
 40                   **(i) seasonal employment as determined by the**  
 41                   **department as a seasonal determination under**  
 42                   **IC 22-4-7-3(b);**



- 1                   (ii) temporary employment; or  
 2                   (iii) intermittent employment;  
 3           **(8) contain:**  
 4                   **(A) the written approval of the collective bargaining agent**  
 5                   **for each collective bargaining agreement that covers any**  
 6                   **affected employee in the affected unit; or**  
 7                   **(B) in the absence of a collective bargaining agreement, a**  
 8                   **certification by the employing unit that the proposed work**  
 9                   **sharing plan, or a summary of the work sharing plan, has**  
 10                   **been made available to each affected employee in the**  
 11                   **affected unit; and**  
 12                   **(9) include the employing unit's attestation that participation**  
 13                   **in a work sharing plan is consistent with the employing unit's**  
 14                   **obligations under applicable federal and state laws.**  
 15           **(b) A work sharing plan may include an option that allows an**  
 16           **affected employee to attend work related training or retraining to**  
 17           **enhance job skills (including employing unit sponsored training or**  
 18           **worker training funded under the federal Workforce Innovation**  
 19           **and Opportunity Act of 2014 (29 U.S.C. 3101 et seq.)) during the**  
 20           **affected employee's work hours. The commissioner shall approve**  
 21           **the training or retraining offered under this subsection.**  
 22           **Sec. 8. A work sharing employer shall agree to:**  
 23                   **(1) submit reports that are necessary to administer the**  
 24                   **approved work sharing plan; and**  
 25                   **(2) allow the department to have access to all records**  
 26                   **necessary to:**  
 27                           **(A) verify the work sharing plan before its approval; and**  
 28                           **(B) monitor and evaluate the application of the approved**  
 29                           **work sharing plan.**  
 30           **Sec. 9. (a) An approved work sharing plan may be modified if:**  
 31                   **(1) the work sharing employer notifies the commissioner in**  
 32                   **writing not later than fifteen (15) calendar days after the date**  
 33                   **the modification is made whenever the modification is not**  
 34                   **substantial; or**  
 35                   **(2) whenever the modification is substantial:**  
 36                           **(A) the modification meets the requirements for approval**  
 37                           **under section 6 of this chapter; and**  
 38                           **(B) the commissioner approves the modification.**  
 39           **If the commissioner determines that a modification reported under**  
 40           **subdivision (1) is substantial, the commissioner shall notify the**  
 41           **work sharing employer of the commissioner's determination and**  
 42           **require the work sharing employer to request approval of the**



1 modification under subdivision (2).

2 (b) The commissioner shall not approve a modification of a  
3 work sharing plan that extends the expiration date of the work  
4 sharing plan.

5 (c) The decision of the commissioner to disapprove a  
6 modification to a work sharing plan is final and may not be  
7 appealed.

8 **Sec. 10. (a)** An affected employee is eligible under this chapter  
9 to receive work sharing benefits for each week in which the  
10 commissioner determines that the affected employee is:

11 (1) able to work; and

12 (2) available for more hours of work for the work sharing  
13 employer.

14 (b) An affected employee who otherwise is eligible may not be  
15 denied work sharing benefits for lack of effort to secure full-time  
16 work as set forth in IC 22-4-14-3 or for failure to apply for  
17 available, suitable work as set forth in IC 22-4-15-2 from a person  
18 other than the work sharing employer.

19 (c) An affected employee shall apply for benefits in accordance  
20 with IC 22-4-17-1.

21 (d) An affected employee who otherwise is eligible for benefits  
22 is:

23 (1) considered to be unemployed for the purpose of the work  
24 sharing unemployment insurance program; and

25 (2) not subject to the requirements of IC 22-4-14-2.

26 **Sec. 11.** The unemployment compensation weekly work sharing  
27 benefit due to an affected employee is determined in STEP FIVE  
28 of the following formula:

29 **STEP ONE:** Determine the weekly benefit amount that would  
30 be due to the employee under IC 22-4-12-4.

31 **STEP TWO:** Subtract the number of the employee's work  
32 hours under the approved work sharing plan from the  
33 number of the employee's normal weekly work hours.

34 **STEP THREE:** Divide the STEP TWO result by the number  
35 of the employee's normal weekly work hours.

36 **STEP FOUR:** Multiply the number determined in STEP ONE  
37 by the quotient determined in STEP THREE.

38 **STEP FIVE:** If the product determined under STEP FOUR is  
39 not a multiple of one dollar (\$1), round down to the nearest  
40 lower multiple of one dollar (\$1).

41 **Sec. 12. (a)** An affected employee may not receive more than  
42 fifty-two (52) weeks of work sharing benefits during each benefit



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period.

(b) The total amount of benefits payable under IC 22-4-12-4 and work sharing benefits payable under this chapter may not exceed the total amount of benefits payable for the benefit period under IC 22-4-12-4(a).

Sec. 13. During a week in which an affected employee who otherwise is eligible for benefits does not work for the work sharing employer:

- (1) the individual shall be paid unemployment insurance benefits in accordance with IC 22-4-12; and
- (2) the week does not count as a week for which a work sharing benefit is received.

Sec. 14. During a week in which an affected employee works for a work sharing employer under an approved work sharing plan and also for another employer, the work sharing benefit is determined under section 11 of this chapter by subtracting (in STEP TWO) the combined hours worked for the work sharing employer and the other employer from the affected employee's normal weekly work hours.

Sec. 15. Work sharing benefits shall be charged to the work sharing employer's experience balance in the same manner as unemployment insurance is charged under this article. Employers liable for payments in lieu of contributions shall have work sharing benefits attributed to service in their employ in the same manner as unemployment insurance is attributed under this article. However, during a period in which the federal government reimburses the state for work sharing benefits, the state may not:

- (1) charge an employer's experience account; or
- (2) require payments in lieu of contributions;

for work sharing benefits paid under this article.

Sec. 16. (a) The commissioner may revoke approval of an approved work sharing plan for good cause, including:

- (1) conduct or an occurrence that tends to defeat the intent and effective operation of the approved work sharing plan;
- (2) failure to comply with an assurance in the approved work sharing plan;
- (3) unreasonable revision of a productivity standard of the affected unit;
- (4) violation of a criterion on which the commissioner based the approval of the work sharing plan; or
- (5) failure of the employing unit to comply with the eligibility requirements under section 4(a) of this chapter for



- 1            participation in the work sharing unemployment insurance  
2            program.
- 3            (b) A work sharing employer may terminate an approved work  
4            sharing plan at any time by notifying the following at least fifteen  
5            (15) calendar days before the termination of the plan:
- 6            (1) The commissioner.
- 7            (2) One (1) of the following:
- 8            (A) The collective bargaining agent for each collective  
9            bargaining agreement that covers any affected employee  
10           in the affected unit.
- 11           (B) In the absence of a collective bargaining agreement,  
12           each affected employee in the affected unit.
- 13           (c) An affected employee in an affected unit or the collective  
14           bargaining agent representing an affected employee in an affected  
15           unit may request that the commissioner take action to revoke the  
16           approval of an approved work sharing plan.
- 17           (d) The commissioner shall give written notice of a revocation  
18           to the work sharing employer specifying:
- 19           (1) the date the revocation is effective; and  
20           (2) the reason or reasons for the revocation.
- 21           (e) The commissioner's decision to revoke approval of an  
22           approved work sharing plan is final and may not be appealed.
- 23           (f) The department shall review the operation of an approved  
24           work sharing plan at least once during the period that the  
25           approved work sharing plan is in effect to ensure that the work  
26           sharing employer is complying with the requirements of the  
27           approved work sharing plan.
- 28           Sec. 17. The department may adopt and enforce rules under  
29           IC 4-22-2 that are necessary to carry out this chapter in  
30           accordance with IC 22-4-19-1.

