



March 25, 2021

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# ENGROSSED

## SENATE BILL No. 234

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DIGEST OF SB 234 (Updated March 24, 2021 1:57 pm - DI 131)

**Citations Affected:** IC 6-3; IC 6-8.1; IC 35-52.

**Synopsis:** Withholding tax remittance. Requires the department of state revenue (department) to provide written notice, by electronic means, to each employer that is registered in the department's online INTIME program and whose employer's Form WH-1 monthly withholding tax report or withholding tax remittance is past due. Requires each payroll service provider to annually register with the department beginning January 1, 2022. Specifies the contents of the (Continued next page)

**Effective:** July 1, 2021; January 1, 2022.

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**Rogers, Holdman, Buchanan, Doriot, Garten,  
Perfect, Raatz, Niezgodski, Buck, Kruse,  
Niemeyer, Messmer, Walker G, Mishler, Busch,  
Charbonneau, Bassler, Qaddoura, Bohacek,  
Alting, Ford J.D., Koch, Boots, Grooms,  
Sandlin, Tomes, Zay, Donato, Baldwin,  
Ford Jon, Houchin, Walker K**

(HOUSE SPONSORS — MILLER D, LEHMAN, CHERRY, THOMPSON)

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January 7, 2021, read first time and referred to Committee on Tax and Fiscal Policy.  
February 9, 2021, amended, reported favorably — Do Pass.  
February 11, 2021, read second time, ordered engrossed. Engrossed.  
February 16, 2021, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

March 2, 2021, read first time and referred to Committee on Ways and Means.  
March 18, 2021, amended, reported — Do Pass. Referred to Committee on Courts and Criminal Code pursuant to Rule 127.  
March 25, 2021, amended, reported — Do Pass.

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## Digest Continued

annual registration form. Defines "payroll service provider" and "responsible person" for purposes of these provisions. Provides that the department may charge an annual payroll service provider registration fee for purposes of the registration program. Provides that a provider shall be permitted to retain any income generated on business client (client) funds while held in a provider's legal possession pending remittance to authorized payees if the client agreement expressly permits it and the provider complies with certain rules. Provides that a payroll service provider contract must include a provision that specifies that if the payroll service provider fails to deposit or remit a business client's employer withholding taxes when due, and the failure is caused by an error or omission of the payroll service provider and not by the business client, the payroll service provider shall be required to reimburse the business client for the business client's payment of any penalties or interest assessed by the department as a result of the failure. Provides that, if a provider knowingly or intentionally fails to remit taxes withheld, the provider is liable and responsible persons shall be personally liable for such taxes that were withheld and not remitted, along with penalties and interest. Provides that a responsible person of the provider who knowingly or intentionally fails to remit taxes that were withheld commits a Class A misdemeanor, and increases the penalty depending on the amount of taxes that were not remitted. Provides that the liability shall not be construed to relieve the liability of the employer or any person otherwise with a duty to withhold. Provides that the employer's address shall be the address of record with the department for withholding tax purposes and that a payroll service provider may not change the address of record with the department.



March 25, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 234

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

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

1           SECTION 1. IC 6-3-4-8.1, AS AMENDED BY P.L.137-2012,  
2           SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3           JULY 1, 2021]: Sec. 8.1. (a) Any entity that is required to file a  
4           monthly return and make a monthly remittance of taxes under sections  
5           8, 12, 13, and 15 of this chapter shall file those returns and make those  
6           remittances twenty (20) days (rather than thirty (30) days) after the end  
7           of each month for which those returns and remittances are filed, if that  
8           entity's average monthly remittance for the immediately preceding  
9           calendar year exceeds one thousand dollars (\$1,000).  
10          (b) The department may require any entity to make the entity's  
11          monthly remittance and file the entity's monthly return twenty (20) days  
12          (rather than thirty (30) days) after the end of each month for which a  
13          return and payment are made if the department estimates that the  
14          entity's average monthly payment for the current calendar year will  
15          exceed one thousand dollars (\$1,000).

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1 (c) If the department determines that a withholding agent is not  
 2 withholding, reporting, or remitting an amount of tax in accordance  
 3 with this chapter, the department may require the withholding agent:

- 4 (1) to make periodic deposits during the reporting period; and  
 5 (2) to file an informational return with each periodic deposit.

6 (d) If the department determines that an entity's:

- 7 (1) estimated monthly withholding tax remittance for the current  
 8 year; or  
 9 (2) average monthly withholding tax remittance for the preceding  
 10 year;

11 exceeds five thousand dollars (\$5,000), the entity shall remit the  
 12 monthly withholding taxes due by electronic fund transfer (as defined  
 13 in IC 4-8.1-2-7) or by delivering in person or by overnight courier a  
 14 payment by cashier's check, certified check, or money order to the  
 15 department. The transfer or payment shall be made on or before the  
 16 date the remittance is due.

17 (e) An entity that withholds taxes shall file the withholding tax  
 18 report and remit withholding taxes electronically through the  
 19 department's online tax filing program.

20 **(f) Beginning after June 30, 2021, the department shall provide**  
 21 **a notice, by electronic means, to each employer:**

22 **(1) that is registered in the department's online tax filing**  
 23 **program; and**

24 **(2) whose employer's:**

25 **(A) Form WH-1 monthly withholding tax report; or**

26 **(B) withholding tax remittance;**

27 **is past due.**

28 **The notice under this subsection shall be made by the department**  
 29 **not more than seven (7) days after the date the employer's Form**  
 30 **WH-1 monthly withholding tax report or employer's withholding**  
 31 **taxes become due. The department may provide the notice under**  
 32 **this subsection by advising the employer to check the employer's**  
 33 **online portal account for an important message and that the**  
 34 **department may not have received the employer's Form WH-1**  
 35 **monthly withholding tax report or employer's withholding tax**  
 36 **remittance, or both, if applicable, when due.**

37 SECTION 2. IC 6-8.1-18 IS ADDED TO THE INDIANA CODE  
 38 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 39 JANUARY 1, 2022]:

40 **Chapter 18. Payroll Service Provider Registration**

41 **Sec. 1. As used in this chapter, "payroll service provider" means**  
 42 **a third party service provider that is authorized to prepare and file**



1 returns, withdraw funds and hold the funds in the payroll service  
 2 provider's bank account, remit payment, and take other similar  
 3 reporting and compliance actions on behalf of a business client  
 4 with regard to that client's tax withholding and remittance duties  
 5 under IC 6-3-4-8. The term includes a reporting agent as described  
 6 in IRS Rev. Proc. 2012-32, 2012-35 I.R.B 1. The term does not  
 7 include an entity registered pursuant to IC 27-16-4-1 or  
 8 IC 27-16-4-6.

9 Sec. 2. As used in this chapter, "responsible person" means an  
 10 officer or director of a payroll service provider, or an employee or  
 11 any other person affiliated with a payroll service provider, who is  
 12 responsible for collecting, accounting for, and paying withholding  
 13 taxes on behalf of a business client of the payroll service provider.

14 Sec. 3. (a) The department shall require each payroll service  
 15 provider to annually register with the department in the manner  
 16 prescribed by the department.

17 (b) The department shall prescribe the annual registration form  
 18 to be used by a registrant under subsection (a). The form must  
 19 require at least the following:

20 (1) A list of all responsible persons of the payroll service  
 21 provider that provide third party payroll services.

22 (2) A certification and acknowledgment by the payroll service  
 23 provider that the bank account that is used by the payroll  
 24 service provider for employer withholding tax deposits shall  
 25 only be used for employer withholding tax liabilities and other  
 26 payroll obligations of client employers that the payroll service  
 27 provider is holding and is required to remit to the appropriate  
 28 agency, employee of the employer, or other payee as  
 29 authorized by the employer, and may not be used for any  
 30 other purpose (other than using the account as a sweep  
 31 account under section 4 of this chapter), including for the  
 32 payment of operating expenses or personal use, and that a  
 33 payroll service provider's withdrawal or use of funds in the  
 34 account for any other purpose constitutes fraud.

35 Sec. 4. Notwithstanding section 3(b)(2) of this chapter, a payroll  
 36 service provider shall be permitted to retain any income generated  
 37 on client funds while held in a payroll service provider's legal  
 38 possession pending remittance to authorized payees if the client  
 39 agreement expressly permits it and the payroll service provider:

40 (1) complies with the National Automated Clearing House  
 41 Association rules;

42 (2) maintains bank and custodial accounts for client funds



1 that are segregated from any operating funds of the payroll  
 2 service provider; and

3 (3) either:

4 (A) is a publicly held company (subject to Securities and  
 5 Exchange Commission reporting, public company  
 6 accounting standards, and audit requirements);

7 (B) is subject to federal or Indiana financial regulatory  
 8 oversight related to the handling of client funds;

9 (C) is subject to review by partner financial institutions at  
 10 least annually; or

11 (D) conducts annual SOC 1 or SOC 2 reports of security  
 12 and integrity controls.

13 **Sec. 5.** A contract entered into by a business client with a payroll  
 14 service provider for third party payroll services must include a  
 15 provision that substantially specifies that if the payroll service  
 16 provider fails to deposit a business client's employer withholding  
 17 taxes when due, and the failure is caused by an error or omission  
 18 of the payroll service provider and not by the business client, the  
 19 payroll service provider shall be required to reimburse the  
 20 business client for the business client's payment of any penalties or  
 21 interest assessed by the department as a result of the failure.

22 **Sec. 6. (a)** If a payroll service provider knowingly or  
 23 intentionally fails to remit taxes withheld pursuant to IC 6-3-4, the  
 24 payroll service provider is liable and the responsible persons of the  
 25 payroll service provider shall be personally liable for such taxes  
 26 that were withheld by the employer and collected by the payroll  
 27 service provider and not remitted, along with any penalties and  
 28 interest on such taxes.

29 (b) A responsible person of the payroll service provider who  
 30 knowingly or intentionally fails to remit taxes withheld by an  
 31 employer and collected by the payroll service provider pursuant to  
 32 IC 6-3-4 commits failure to remit taxes, a Class A misdemeanor.  
 33 However, the offense is a:

34 (1) Level 6 felony if the amount of the unremitted taxes is at  
 35 least seven hundred fifty dollars (\$750) and less than fifty  
 36 thousand dollars (\$50,000); and

37 (2) Level 5 felony if the amount of the unremitted taxes is at  
 38 least fifty thousand dollars (\$50,000).

39 (c) The liability under this section shall not be construed to  
 40 relieve the liability of the employer, or any person otherwise with  
 41 a duty to withhold and remit taxes under IC 6-3-4 for taxes that  
 42 were withheld or should have been withheld pursuant to IC 6-3-4.



1 (d) Any amounts paid to or collected by the department  
 2 pursuant to this section from a payroll service provider or  
 3 responsible person of a payroll service provider must be credited  
 4 to the employer's liability in the same manner as if the employer or  
 5 person otherwise with a duty to withhold and remit taxes under  
 6 IC 6-3-4 had remitted that amount.

7 Sec. 7. The department may charge an annual fee for  
 8 registration under this chapter. The following apply to any fee  
 9 charged by the department under this section:

10 (1) The fee must be imposed in a range of amounts based on  
 11 the number of clients of a payroll service provider.

12 (2) The estimated annual revenue from the fee may not exceed  
 13 the cost to implement the provisions of this chapter and on  
 14 ongoing maintenance.

15 Any fees collected under this section shall be deposited into a  
 16 special account in the state general fund known as the payroll  
 17 service provider registration fee account. Money in the payroll  
 18 service provider registration fee account is annually appropriated  
 19 to the department for its use in carrying out the purposes of this  
 20 chapter.

21 Sec. 8. The employer's address shall be the address of record  
 22 with the department for withholding tax purposes. An employer's  
 23 address of record with the department may be changed only by  
 24 direct written request from the employer. A payroll service  
 25 provider may not change an address of record with the  
 26 department.

27 Sec. 9. The department shall provide notice to an employer  
 28 when a payment of taxes pursuant to IC 6-3-4 has been remitted by  
 29 either the employer or the payroll service provider or any other  
 30 entity that pays the taxes on behalf of the employer. The  
 31 department may provide the notice under this section by advising  
 32 the employer to check the employer's online portal account.

33 Sec. 10. The department may adopt rules under IC 4-22-2,  
 34 including emergency rules in the manner provided under  
 35 IC 4-22-2-37.1, for the administration and enforcement of this  
 36 chapter.

37 SECTION 3. IC 35-52-6-63.5 IS ADDED TO THE INDIANA  
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 39 [EFFECTIVE JULY 1, 2021]: Sec. 63.5. IC 6-8.1-18-6(b) defines a  
 40 crime concerning failure to remit taxes collected by a payroll  
 41 service provider.



## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 234, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete committee amendment number 4 adopted by the committee on tax and fiscal policy on January 26, 2021.

Page 1, line 10, delete ";" and insert "**before January 1, 2023, and one thousand five hundred dollars (\$1,500) after December 31, 2022;**".

Page 1, line 11, delete "July 1, 2022," and insert "**December 31, 2022,**".

Page 1, line 15, delete "state employee withholdings" and insert "**employee state and county withholdings**".

Page 2, line 4, delete "state employee withholdings" and insert "**employee state and county withholdings**".

Page 2, line 8, after "payment." insert "**The department shall notify, in a manner prescribed by the department, all entities subject to this section of the deposit requirements of this section.**".

Page 2, line 14, delete "." and insert "**before January 1, 2023, and one thousand five hundred dollars (\$1,500) after December 31, 2022.**".

Page 3, line 11, delete "UPON PASSAGE" and insert "JANUARY 1, 2022".

Page 3, line 15, after "returns," insert "**withdraw funds and hold the funds in the payroll service provider's bank account,**".

Page 3, line 19, after "2012-35 I.R.B 1." insert "**The term does not include an entity registered pursuant to IC 27-16-4-1 or IC 27-16-4-6.**".

Page 3, line 42, delete "account)," and insert "**account under section 4 of this chapter,**".

Page 4, between lines 3 and 4, begin a new paragraph and insert:

**"Sec. 4. Notwithstanding section 3(b)(2) of this chapter, a payroll service provider shall be permitted to retain any income generated on client funds while held in a payroll service provider's legal possession pending remittance to authorized payees if the client agreement expressly permits it and the payroll service provider:**

- (1) complies with the National Automated Clearing House Association rules;**
- (2) maintains bank and custodial accounts for client funds that are segregated from any operating funds of the payroll**





service provider; and

(3) either:

(A) is a publicly held company (subject to Securities and Exchange Commission reporting, public company accounting standards, and audit requirements);

(B) is subject to federal or Indiana financial regulatory oversight related to the handling of client funds;

(C) is subject to review by partner financial institutions at least annually; or

(D) conducts annual SOC 1 or SOC 2 reports of security and integrity controls."

Page 4, line 4, delete "4." and insert "5."

Page 4, line 8, delete "not caused by the business client," and insert "caused by an error or omission of the payroll service provider and not by the business client,".

Page 4, delete lines 9 through 11, and insert "the payroll service provider shall be required to reimburse the business client for the business client's payment of any penalties or interest assessed by the department as a result of the failure."

Page 4, between lines 11 and 12, begin a new paragraph and insert:

"Sec. 6. (a) If a payroll service provider knowingly fails to remit taxes withheld pursuant to IC 6-3-4, the payroll service provider is liable and the responsible persons of the payroll service provider shall be personally liable for such taxes that were withheld by the employer and collected by the payroll service provider and not remitted, along with any penalties and interest on such taxes.

(b) A responsible person of the payroll service provider who knowingly fails to remit taxes withheld by employer and collected by the payroll service provider pursuant to IC 6-3-4 commits a Level 6 felony.

(c) The liability under this section shall not be construed to relieve the liability of the employer, or any person otherwise with a duty to withhold and remit taxes under IC 6-3-4 for taxes that were withheld or should have been withheld pursuant to IC 6-3-4.

(d) Any amounts paid to or collected by the department pursuant to this section from a payroll service provider or responsible person of a payroll service provider must be credited to the employer's liability in the same manner as if the employer or person otherwise with a duty to withhold and remit taxes under IC 6-3-4 had remitted that amount."

Page 4, line 12, delete "5." and insert "7."

Page 4, line 26, delete "6." and insert "8."



Page 4, between lines 31 and 32, begin a new paragraph and insert:  
**"Sec. 9. The department shall provide notice to an employer when a payment of taxes pursuant to IC 6-3-4 has been remitted by either the employer or the payroll service provider or any other entity that pays the taxes on behalf of the employer. The department may provide the notice under this section by advising the employer to check the employer's online portal account."**

Page 4, line 32, delete "7." and insert "10."

Page 4, line 32, delete "rules" and insert **"rules under IC 4-22-2, including emergency rules in the manner provided under IC 4-22-2-37.1,"**.

Page 4, between lines 33 and 34, begin a new paragraph and insert:  
**"SECTION 3. IC 35-52-6-63.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 63.5. IC 6-8.1-18-6(b) defines a crime concerning taxes."**

Page 4, delete line 34.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 234 as introduced and as amended by the committee on tax and fiscal policy on January 26, 2021.)

HOLDMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 234, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 15.

Delete page 2.

Page 3, delete lines 1 through 14.

Page 3, line 22, delete "or" and insert **"and"**.

Page 4, line 42, after "knowingly" insert **"or intentionally"**.

Page 5, delete lines 6 through 9, begin a new paragraph and insert:  
**"(b) A responsible person of the payroll service provider who**



**knowingly or intentionally fails to remit taxes withheld by an employer and collected by the payroll service provider pursuant to IC 6-3-4 commits failure to remit taxes, a Class A misdemeanor. However, the offense is a:**

**(1) Level 6 felony if the amount of the unremitted taxes is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and**

**(2) Level 5 felony if the amount of the unremitted taxes is at least fifty thousand dollars (\$50,000)."**

Page 5, delete lines 40 through 42.

Page 6, delete lines 1 through 3.

Page 6, line 4, delete "10." and insert "9."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 234 as printed February 10, 2021.)

BROWN T

Committee Vote: yeas 20, nays 1.

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Engrossed Senate Bill 234, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

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

"SECTION 1. IC 6-3-4-8.1, AS AMENDED BY P.L.137-2012, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8.1. (a) Any entity that is required to file a monthly return and make a monthly remittance of taxes under sections 8, 12, 13, and 15 of this chapter shall file those returns and make those remittances twenty (20) days (rather than thirty (30) days) after the end of each month for which those returns and remittances are filed, if that entity's average monthly remittance for the immediately preceding calendar year exceeds one thousand dollars (\$1,000).

(b) The department may require any entity to make the entity's monthly remittance and file the entity's monthly return twenty (20) days

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(rather than thirty (30) days) after the end of each month for which a return and payment are made if the department estimates that the entity's average monthly payment for the current calendar year will exceed one thousand dollars (\$1,000).

(c) If the department determines that a withholding agent is not withholding, reporting, or remitting an amount of tax in accordance with this chapter, the department may require the withholding agent:

- (1) to make periodic deposits during the reporting period; and
- (2) to file an informational return with each periodic deposit.

(d) If the department determines that an entity's:

- (1) estimated monthly withholding tax remittance for the current year; or
- (2) average monthly withholding tax remittance for the preceding year;

exceeds five thousand dollars (\$5,000), the entity shall remit the monthly withholding taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the remittance is due.

(e) An entity that withholds taxes shall file the withholding tax report and remit withholding taxes electronically through the department's online tax filing program.

**(f) Beginning after June 30, 2021, the department shall provide a notice, by electronic means, to each employer:**

- (1) that is registered in the department's online tax filing program; and**
- (2) whose employer's:**
  - (A) Form WH-1 monthly withholding tax report; or**
  - (B) withholding tax remittance;****is past due.**

**The notice under this subsection shall be made by the department not more than seven (7) days after the date the employer's Form WH-1 monthly withholding tax report or employer's withholding taxes become due. The department may provide the notice under this subsection by advising the employer to check the employer's online portal account for an important message and that the department may not have received the employer's Form WH-1 monthly withholding tax report or employer's withholding tax remittance, or both, if applicable, when due."**

Page 4, between lines 17 and 18, begin a new paragraph and insert:  
**"Sec. 9. The department shall provide notice to an employer**



**when a payment of taxes pursuant to IC 6-3-4 has been remitted by either the employer or the payroll service provider or any other entity that pays the taxes on behalf of the employer. The department may provide the notice under this section by advising the employer to check the employer's online portal account."**

Page 4, line 18, delete "9." and insert "10."

Page 4, line 25, delete "taxes." and insert "**failure to remit taxes collected by a payroll service provider."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to ESB 234 as printed March 18, 2021.)

MCNAMARA

Committee Vote: yeas 11, nays 0.

