

HOUSE BILL No. 1175

DIGEST OF HB 1175 (Updated January 28, 1998 1:15 pm - DI 96)

Citations Affected: IC 22-3.

Synopsis: Employer negligence. Provides that if an employer causes the injury, disablement, or death of an employee through negligence, the employee (or the employee's dependents in the event of the employee's death) is entitled to three times the amount of compensation otherwise payable to the employee (or the employee's dependents) under the worker's compensation and occupational diseases law. Provides that when an injury compensable under worker's compensation results in damage to muscles or nerves resulting in the loss of function or unremitting pain, the employer shall furnish or provide a surgically implanted muscle stimulator or a transcutaneous electric nerve stimulator unit (TENS unit) to the employee. Provides that when repairs or replacements are necessary for the surgically implanted muscle stimulator or transcutaneous electric nerve stimulator unit (TENS unit) due to either medical necessity or normal wear or
(Continued next page)

Effective: July 1, 1998.

Kromkowski

January 8, 1998, read first time and referred to Committee on Labor and Employment.
January 28, 1998, amended, reported — Do Pass.

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tear, the cost of the replacement or repair shall be paid from the second injury fund upon order or award of the worker's compensation board.

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January 29, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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HOUSE BILL No. 1175

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

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

- 1 SECTION 1. IC 22-3-2-7.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1998]: **Sec. 7.5. If an employer causes the injury or death of an**
4 **employee through negligence:**
5 (1) **the injured employee is; or**
6 (2) **the employee's dependents, in the event of the employee's**
7 **death, are:**
8 **entitled to three (3) times the amount of compensation otherwise**
9 **granted to an employee or the employee's dependents under**
10 **IC 22-3-3 through IC 22-3-6. The worker's compensation board**
11 **shall determine when an award of compensation shall be increased**
12 **under this section.**
13 SECTION 2. IC 22-3-3-4, AS AMENDED BY P.L.258-1997(ss),
14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 1998]: Sec. 4. (a) After an injury and prior to an adjudication

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1 of permanent impairment, the employer shall furnish or cause to be
2 furnished, free of charge to the employee, an attending physician for
3 the treatment of his injuries, and in addition thereto such surgical,
4 hospital and nursing services and supplies as the attending physician
5 or the worker's compensation board may deem necessary. If the
6 employee is requested or required by the employer to submit to
7 treatment outside the county of employment, the employer shall also
8 pay the reasonable expense of travel, food, and lodging necessary
9 during the travel, but not to exceed the amount paid at the time of the
10 travel by the state to its employees under the state travel policies and
11 procedures established by the department of administration and
12 approved by the state budget agency.

13 (b) During the period of temporary total disability resulting from
14 the injury, the employer shall furnish the physician services, and
15 supplies, and the worker's compensation board may, on proper
16 application of either party, require that treatment by the physician and
17 services and supplies be furnished by or on behalf of the employer as
18 the worker's compensation board may deem reasonably necessary.

19 (c) After an employee's injury has been adjudicated by agreement
20 or award on the basis of permanent partial impairment and within the
21 statutory period for review in such case as provided in section 27 of
22 this chapter, the employer may continue to furnish a physician or
23 surgeon and other medical services and supplies, and the worker's
24 compensation board may within the statutory period for review as
25 provided in section 27 of this chapter, on a proper application of either
26 party, require that treatment by that physician and other medical
27 services and supplies be furnished by and on behalf of the employer as
28 the worker's compensation board may deem necessary to limit or
29 reduce the amount and extent of the employee's impairment. The
30 refusal of the employee to accept such services and supplies, when
31 provided by or on behalf of the employer, shall bar the employee from
32 all compensation otherwise payable during the period of the refusal,
33 and his right to prosecute any proceeding under IC 22-3-2 through
34 IC 22-3-6 shall be suspended and abated until the employee's refusal
35 ceases. The employee must be served with a notice setting forth the
36 consequences of the refusal under this section. The notice must be in
37 a form prescribed by the worker's compensation board. No
38 compensation for permanent total impairment, permanent partial
39 impairment, permanent disfigurement, or death shall be paid or payable
40 for that part or portion of the impairment, disfigurement, or death
41 which is the result of the failure of the employee to accept the
42 treatment, services, and supplies required under this section. However,

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1 an employer may at any time permit an employee to have treatment for
 2 his injuries by spiritual means or prayer in lieu of the physician or
 3 surgeon and other medical services and supplies required under this
 4 section.

5 (d) If, because of an emergency, or because of the employer's
 6 failure to provide an attending physician or surgical, hospital, or
 7 nursing services and supplies, or treatment by spiritual means or
 8 prayer, as required by this section, or because of any other good reason,
 9 a physician other than that provided by the employer treats the injured
 10 employee during the period of the employee's temporary total
 11 disability, or necessary and proper surgical, hospital, or nursing
 12 services and supplies are procured within the period, the reasonable
 13 cost of those services and supplies shall, subject to the approval of the
 14 worker's compensation board, be paid by the employer.

15 (e) Regardless of when it occurs, where a compensable injury
 16 results in the amputation of a body part, the enucleation of an eye, ~~or~~
 17 the loss of natural teeth, **or damage to muscles or nerves resulting in**
 18 **the loss of function or unremitting pain**, the employer shall furnish
 19 **or provide** an appropriate artificial member, braces, ~~and~~
 20 prosthodontics, **surgically implanted muscle stimulator, and**
 21 **transcutaneous electric nerve stimulator unit (TENS unit)**. The cost
 22 of repairs to or replacements for the artificial members, braces, ~~or~~
 23 prosthodontics, **surgically implanted muscle stimulator, and**
 24 **transcutaneous electric nerve stimulator unit (TENS unit)** that
 25 result from a compensable injury pursuant to a prior award and are
 26 required due to either medical necessity or normal wear and tear,
 27 determined according to the employee's individual use, but not abuse,
 28 of the artificial member, braces, ~~or~~ prosthodontics, **surgically**
 29 **implanted muscle stimulator, and transcutaneous electric muscle**
 30 **stimulator (TENS unit)** shall be paid from the second injury fund
 31 upon order or award of the worker's compensation board. The
 32 employee is not required to meet any other requirement for admission
 33 to the second injury fund.

34 (f) If an accident arising out of and in the course of employment
 35 after June 30, 1997, results in the loss of or damage to an artificial
 36 member, a brace, an implant, eyeglasses, prosthodontics, or other
 37 medically prescribed device, the employer shall repair the artificial
 38 member, brace, implant, eyeglasses, prosthodontics, or other medically
 39 prescribed device or furnish an identical or a reasonably equivalent
 40 replacement.

41 (g) This section may not be construed to prohibit an agreement
 42 between an employer and the employer's employees that has the

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1 approval of the board and that binds the parties to:

2 (1) medical care furnished by health care providers selected by
3 agreement before or after injury; or

4 (2) the findings of a health care provider who was chosen by
5 agreement.

6 SECTION 3. IC 22-3-7-7.5 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 1998]: **Sec. 7.5. If an employer causes the disablement or death
9 of an employee through negligence:**

10 (1) the disabled employee is; or

11 (2) the employee's dependents, in the event of the employee's
12 death, are;

13 **entitled to three (3) times the amount of compensation otherwise
14 granted to an employee or the employee's dependents under this
15 chapter. The worker's compensation board shall determine when
16 an award of compensation shall be increased under this section.**

17 SECTION 4. IC 22-3-7-17, AS AMENDED BY P.L.258-1997(ss),
18 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 1998]: Sec. 17. (a) During the period of disablement, the
20 employer shall furnish or cause to be furnished, free of charge to the
21 employee, an attending physician for the treatment of his occupational
22 disease, and in addition thereto such surgical, hospital, and nursing
23 services and supplies as the attending physician or the worker's
24 compensation board may deem necessary. If the employee is requested
25 or required by the employer to submit to treatment outside the county
26 of employment, said employer shall also pay the reasonable expense of
27 travel, food, and lodging necessary during the travel, but not to exceed
28 the amount paid at the time of said travel by the state of Indiana to its
29 employees.

30 (b) During the period of disablement resulting from the
31 occupational disease, the employer shall furnish such physician,
32 services, and supplies, and the worker's compensation board may, on
33 proper application of either party, require that treatment by such
34 physician and such services and supplies be furnished by or on behalf
35 of the employer as the board may deem reasonably necessary. After an
36 employee's occupational disease has been adjudicated by agreement or
37 award on the basis of permanent partial impairment and within the
38 statutory period for review in such case as provided in section 27(i) of
39 this chapter, the employer may continue to furnish a physician or a
40 surgeon and other medical services and supplies, and the board may,
41 within such statutory period for review as provided in section 27(i) of
42 this chapter, on a proper application of either party, require that



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1 treatment by such physician or surgeon and such services and supplies
 2 be furnished by and on behalf of the employer as the board may deem
 3 necessary to limit or reduce the amount and extent of such impairment.
 4 The refusal of the employee to accept such services and supplies when
 5 so provided by or on behalf of the employer, shall bar the employee
 6 from all compensation otherwise payable during the period of such
 7 refusal and his right to prosecute any proceeding under this chapter
 8 shall be suspended and abated until such refusal ceases. The employee
 9 must be served with a notice setting forth the consequences of the
 10 refusal under this section. The notice must be in a form prescribed by
 11 the worker's compensation board. No compensation for permanent total
 12 impairment, permanent partial impairment, permanent disfigurement,
 13 or death shall be paid or payable for that part or portion of such
 14 impairment, disfigurement, or death which is the result of the failure of
 15 such employee to accept such treatment, services, and supplies,
 16 provided that an employer may at any time permit an employee to have
 17 treatment for his disease or injury by spiritual means or prayer in lieu
 18 of such physician, services, and supplies.

19 (c) Regardless of when it occurs, where a compensable
 20 occupational disease results in the amputation of a body part, the
 21 enucleation of an eye, ~~or~~ the loss of natural teeth, **or damage to**
 22 **muscles or nerves resulting in the loss of function or unremitting**
 23 **pain**, the employer shall furnish **or provide** an appropriate artificial
 24 member, braces, ~~and~~ prosthodontics, **surgically implanted muscle**
 25 **stimulator, and transcutaneous electric nerve stimulator unit**
 26 **(TENS unit)**. The cost of repairs to or replacements for the artificial
 27 members, braces, ~~or~~ prosthodontics, **surgically implanted muscle**
 28 **stimulator, and transcutaneous electric nerve stimulator unit**
 29 **(TENS unit)** that result from a compensable occupational disease
 30 pursuant to a prior award and are required due to either medical
 31 necessity or normal wear and tear, determined according to the
 32 employee's individual use, but not abuse, of the artificial member,
 33 braces, ~~or~~ prosthodontics, **surgically implanted muscle stimulator,**
 34 **and transcutaneous electric nerve stimulator unit (TENS unit)** shall
 35 be paid from the second injury fund upon order or award of the
 36 worker's compensation board. The employee is not required to meet
 37 any other requirement for admission to the second injury fund.

38 (d) If an emergency or because of the employer's failure to provide
 39 such attending physician or such surgical, hospital, or nurse's services
 40 and supplies or such treatment by spiritual means or prayer as specified
 41 in this section, or for other good reason, a physician other than that
 42 provided by the employer treats the diseased employee within the



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1 period of disability, or necessary and proper surgical, hospital, or
2 nurse's services and supplies are procured within said period, the
3 reasonable cost of such services and supplies shall, subject to approval
4 of the worker's compensation board, be paid by the employer.
5 (e) This section may not be construed to prohibit an agreement
6 between an employer and employees that has the approval of the board
7 and that:
8 (1) binds the parties to medical care furnished by providers
9 selected by agreement before or after disablement; or
10 (2) makes the findings of a provider chosen in this manner
11 binding upon the parties.
12 (f) The employee and the employee's estate do not have liability to
13 a health care provider for payment for services obtained under this
14 section. The right to order payment for all services provided under this
15 chapter is solely with the board. All claims by a health care provider for
16 payment for services are against the employer and the employer's
17 insurance carrier, if any, and must be made with the board under this
18 chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1175, 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 lines 12 and 13, begin a new paragraph and insert:

"SECTION 2. IC 22-3-3-4, AS AMENDED BY P.L.258-1997(ss), SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) After an injury and prior to an adjudication of permanent impairment, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of his injuries, and in addition thereto such surgical, hospital and nursing services and supplies as the attending physician or the worker's compensation board may deem necessary. If the employee is requested or required by the employer to submit to treatment outside the county of employment, the employer shall also pay the reasonable expense of travel, food, and lodging necessary during the travel, but not to exceed the amount paid at the time of the travel by the state to its employees under the state travel policies and procedures established by the department of administration and approved by the state budget agency.

(b) During the period of temporary total disability resulting from the injury, the employer shall furnish the physician services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by the physician and services and supplies be furnished by or on behalf of the employer as the worker's compensation board may deem reasonably necessary.

(c) After an employee's injury has been adjudicated by agreement or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27 of this chapter, the employer may continue to furnish a physician or surgeon and other medical services and supplies, and the worker's compensation board may within the statutory period for review as provided in section 27 of this chapter, on a proper application of either party, require that treatment by that physician and other medical services and supplies be furnished by and on behalf of the employer as the worker's compensation board may deem necessary to limit or reduce the amount and extent of the employee's impairment. The refusal of the employee to accept such services and supplies, when provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of the refusal,

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and his right to prosecute any proceeding under IC 22-3-2 through IC 22-3-6 shall be suspended and abated until the employee's refusal ceases. The employee must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part or portion of the impairment, disfigurement, or death which is the result of the failure of the employee to accept the treatment, services, and supplies required under this section. However, an employer may at any time permit an employee to have treatment for his injuries by spiritual means or prayer in lieu of the physician or surgeon and other medical services and supplies required under this section.

(d) If, because of an emergency, or because of the employer's failure to provide an attending physician or surgical, hospital, or nursing services and supplies, or treatment by spiritual means or prayer, as required by this section, or because of any other good reason, a physician other than that provided by the employer treats the injured employee during the period of the employee's temporary total disability, or necessary and proper surgical, hospital, or nursing services and supplies are procured within the period, the reasonable cost of those services and supplies shall, subject to the approval of the worker's compensation board, be paid by the employer.

(e) Regardless of when it occurs, where a compensable injury results in the amputation of a body part, the enucleation of an eye, ~~or~~ the loss of natural teeth, **or damage to muscles or nerves resulting in the loss of function or unremitting pain**, the employer shall furnish **or provide** an appropriate artificial member, braces, ~~and~~ prosthodontics, **surgically implanted muscle stimulator, and transcutaneous electric nerve stimulator unit (TENS unit)**. The cost of repairs to or replacements for the artificial members, braces, ~~or~~ prosthodontics, **surgically implanted muscle stimulator, and transcutaneous electric nerve stimulator unit (TENS unit)** that result from a compensable injury pursuant to a prior award and are required due to either medical necessity or normal wear and tear, determined according to the employee's individual use, but not abuse, of the artificial member, braces, ~~or~~ prosthodontics, **surgically implanted muscle stimulator, and transcutaneous electric muscle stimulator (TENS unit)** shall be paid from the second injury fund upon order or award of the worker's compensation board. The employee is not required to meet any other requirement for admission

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to the second injury fund.

(f) If an accident arising out of and in the course of employment after June 30, 1997, results in the loss of or damage to an artificial member, a brace, an implant, eyeglasses, prosthodontics, or other medically prescribed device, the employer shall repair the artificial member, brace, implant, eyeglasses, prosthodontics, or other medically prescribed device or furnish an identical or a reasonably equivalent replacement.

(g) This section may not be construed to prohibit an agreement between an employer and the employer's employees that has the approval of the board and that binds the parties to:

- (1) medical care furnished by health care providers selected by agreement before or after injury; or
- (2) the findings of a health care provider who was chosen by agreement."

Page 2, after line 6, begin a new paragraph and insert:

"SECTION 4. IC 22-3-7-17, AS AMENDED BY P.L.258-1997(ss), SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. (a) During the period of disablement, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of his occupational disease, and in addition thereto such surgical, hospital, and nursing services and supplies as the attending physician or the worker's compensation board may deem necessary. If the employee is requested or required by the employer to submit to treatment outside the county of employment, said employer shall also pay the reasonable expense of travel, food, and lodging necessary during the travel, but not to exceed the amount paid at the time of said travel by the state of Indiana to its employees.

(b) During the period of disablement resulting from the occupational disease, the employer shall furnish such physician, services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by such physician and such services and supplies be furnished by or on behalf of the employer as the board may deem reasonably necessary. After an employee's occupational disease has been adjudicated by agreement or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27(i) of this chapter, the employer may continue to furnish a physician or a surgeon and other medical services and supplies, and the board may, within such statutory period for review as provided in section 27(i) of this chapter, on a proper application of either party, require that



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treatment by such physician or surgeon and such services and supplies be furnished by and on behalf of the employer as the board may deem necessary to limit or reduce the amount and extent of such impairment. The refusal of the employee to accept such services and supplies when so provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of such refusal and his right to prosecute any proceeding under this chapter shall be suspended and abated until such refusal ceases. The employee must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part or portion of such impairment, disfigurement, or death which is the result of the failure of such employee to accept such treatment, services, and supplies, provided that an employer may at any time permit an employee to have treatment for his disease or injury by spiritual means or prayer in lieu of such physician, services, and supplies.

(c) Regardless of when it occurs, where a compensable occupational disease results in the amputation of a body part, the enucleation of an eye, ~~or~~ the loss of natural teeth, **or damage to muscles or nerves resulting in the loss of function or unremitting pain**, the employer shall furnish **or provide** an appropriate artificial member, braces, ~~and~~ prosthodontics, **surgically implanted muscle stimulator, and transcutaneous electric nerve stimulator unit (TENS unit)**. The cost of repairs to or replacements for the artificial members, braces, ~~or~~ prosthodontics, **surgically implanted muscle stimulator, and transcutaneous electric nerve stimulator unit (TENS unit)** that result from a compensable occupational disease pursuant to a prior award and are required due to either medical necessity or normal wear and tear, determined according to the employee's individual use, but not abuse, of the artificial member, braces, ~~or~~ prosthodontics, **surgically implanted muscle stimulator, and transcutaneous electric nerve stimulator unit (TENS unit)** shall be paid from the second injury fund upon order or award of the worker's compensation board. The employee is not required to meet any other requirement for admission to the second injury fund.

(d) If an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital, or nurse's services and supplies or such treatment by spiritual means or prayer as specified in this section, or for other good reason, a physician other than that provided by the employer treats the diseased employee within the



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period of disability, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within said period, the reasonable cost of such services and supplies shall, subject to approval of the worker's compensation board, be paid by the employer.

(e) This section may not be construed to prohibit an agreement between an employer and employees that has the approval of the board and that:

- (1) binds the parties to medical care furnished by providers selected by agreement before or after disablement; or
- (2) makes the findings of a provider chosen in this manner binding upon the parties.

(f) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this chapter is solely with the board. All claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1175 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 5.

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