

Adopted Rejected

COMMITTEE REPORT

YES: 15
NO: 0

MR. SPEAKER:

*Your Committee on Insurance, Corporations and Small Business, to which was referred Senate Bill 224, 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:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 22-3-5-6 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE APRIL 1, 1998]: Sec. 6. (a) The worker's
- 5 compensation supplemental administrative fund is established for the
- 6 purpose of carrying out the administrative purposes and functions of
- 7 the worker's compensation board. The fund consists of fees collected
- 8 from employers under sections 1 through 2 of this chapter. ~~and from~~
- 9 ~~fees collected under IC 22-3-2-14.5 and IC 22-3-7-34.5.~~ The fund shall
- 10 be administered by the worker's compensation board. ~~Money in the~~
- 11 ~~fund is annually appropriated to the worker's compensation board for~~
- 12 ~~its use in carrying out the administrative purposes and functions of the~~
- 13 ~~worker's compensation board.~~
- 14 (b) The money in the fund is not to be used to replace funds
- 15 otherwise appropriated to the board. Money in the fund at the end of
- 16 the state fiscal year does not revert to the state general fund.

1 SECTION 2. IC 22-3-6-1, AS AMENDED BY P.L.258-1997(ss),
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 APRIL 1, 1998]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the
4 context otherwise requires:

5 (a) "Employer" includes the state and any political subdivision,
6 any municipal corporation within the state, any individual or the legal
7 representative of a deceased individual, firm, association, limited
8 liability company, or corporation or the receiver or trustee of the same,
9 using the services of another for pay. If the employer is insured, the
10 term includes the employer's insurer so far as applicable. However, the
11 inclusion of an employer's insurer within this definition does not allow
12 an employer's insurer to avoid payment for services rendered to an
13 employee with the approval of the employer.

14 (b) "Employee" means every person, including a minor, in the
15 service of another, under any contract of hire or apprenticeship, written
16 or implied, except one whose employment is both casual and not in the
17 usual course of the trade, business, occupation, or profession of the
18 employer.

19 (1) An executive officer elected or appointed and empowered in
20 accordance with the charter and bylaws of a corporation, other
21 than a municipal corporation or governmental subdivision or a
22 charitable, religious, educational, or other nonprofit corporation,
23 is an employee of the corporation under IC 22-3-2 through
24 IC 22-3-6.

25 (2) An executive officer of a municipal corporation or other
26 governmental subdivision or of a charitable, religious,
27 educational, or other nonprofit corporation may, notwithstanding
28 any other provision of IC 22-3-2 through IC 22-3-6, be brought
29 within the coverage of its insurance contract by the corporation
30 by specifically including the executive officer in the contract of
31 insurance. The election to bring the executive officer within the
32 coverage shall continue for the period the contract of insurance
33 is in effect, and during this period, the executive officers thus
34 brought within the coverage of the insurance contract are
35 employees of the corporation under IC 22-3-2 through IC 22-3-6.

36 (3) Any reference to an employee who has been injured, when
37 the employee is dead, also includes the employee's legal
38 representatives, dependents, and other persons to whom

- 1 compensation may be payable.
- 2 (4) An owner of a sole proprietorship may elect to include the
 3 owner as an employee under IC 22-3-2 through IC 22-3-6 if the
 4 owner is actually engaged in the proprietorship business. If the
 5 owner makes this election, the owner must serve upon the
 6 owner's insurance carrier and upon the board written notice of
 7 the election. No owner of a sole proprietorship may be
 8 considered an employee under IC 22-3-2 through IC 22-3-6 until
 9 the notice has been received. ~~If the owner of a sole~~
 10 ~~proprietorship is an independent contractor in the construction~~
 11 ~~trades and does not make the election provided under this~~
 12 ~~subdivision, the owner must obtain an affidavit of exemption~~
 13 ~~under IC 22-3-2-14.5.~~
- 14 (5) A partner in a partnership may elect to include the partner as
 15 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
 16 actually engaged in the partnership business. If a partner makes
 17 this election, the partner must serve upon the partner's insurance
 18 carrier and upon the board written notice of the election. No
 19 partner may be considered an employee under IC 22-3-2 through
 20 IC 22-3-6 until the notice has been received. ~~If a partner in a~~
 21 ~~partnership is an independent contractor in the construction~~
 22 ~~trades and does not make the election provided under this~~
 23 ~~subdivision, the partner must obtain an affidavit of exemption~~
 24 ~~under IC 22-3-2-14.5.~~
- 25 (6) Real estate professionals are not employees under IC 22-3-2
 26 through IC 22-3-6 if:
- 27 (A) they are licensed real estate agents;
 - 28 (B) substantially all their remuneration is directly related to
 29 sales volume and not the number of hours worked; and
 - 30 (C) they have written agreements with real estate brokers
 31 stating that they are not to be treated as employees for tax
 32 purposes.
- 33 ~~(7) A person is an independent contractor in the construction~~
 34 ~~trades and not an employee under IC 22-3-2 through IC 22-3-6~~
 35 ~~if the person is an independent contractor under the guidelines~~
 36 ~~of the United States Internal Revenue Service.~~
- 37 ~~(8) (7) An owner-operator that provides a motor vehicle and the~~
 38 ~~services of a driver under a written contract that is subject to~~

1 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
 2 carrier is not an employee of the motor carrier for purposes of
 3 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be
 4 covered and have the owner-operator's drivers covered under a
 5 worker's compensation insurance policy or authorized
 6 self-insurance that insures the motor carrier if the
 7 owner-operator pays the premiums as requested by the motor
 8 carrier. An election by an owner-operator under this subdivision
 9 does not terminate the independent contractor status of the
 10 owner-operator for any purpose other than the purpose of this
 11 subdivision.

12 ~~(9)~~ (8) A member or manager in a limited liability company may
 13 elect to include the member or manager as an employee under
 14 IC 22-3-2 through IC 22-3-6 if the member or manager is
 15 actually engaged in the limited liability company business. If a
 16 member or manager makes this election, the member or manager
 17 must serve upon the member's or manager's insurance carrier and
 18 upon the board written notice of the election. A member or
 19 manager may not be considered an employee under IC 22-3-2
 20 through IC 22-3-6 until the notice has been received.

21 (c) "Minor" means an individual who has not reached seventeen
 22 (17) years of age.

23 (1) Unless otherwise provided in this subsection, a minor
 24 employee shall be considered as being of full age for all
 25 purposes of IC 22-3-2 through IC 22-3-6.

26 (2) If the employee is a minor who, at the time of the accident,
 27 is employed, required, suffered, or permitted to work in violation
 28 of IC 20-8.1-4-25, the amount of compensation and death
 29 benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be
 30 double the amount which would otherwise be recoverable. The
 31 insurance carrier shall be liable on its policy for one-half (1/2) of
 32 the compensation or benefits that may be payable on account of
 33 the injury or death of the minor, and the employer shall be liable
 34 for the other one-half (1/2) of the compensation or benefits. If
 35 the employee is a minor who is not less than sixteen (16) years
 36 of age and who has not reached seventeen (17) years of age and
 37 who at the time of the accident is employed, suffered, or
 38 permitted to work at any occupation which is not prohibited by

1 law, this subdivision does not apply.

2 (3) A minor employee who, at the time of the accident, is a
3 student performing services for an employer as part of an
4 approved program under IC 20-10.1-6-7 shall be considered a
5 full-time employee for the purpose of computing compensation
6 for permanent impairment under IC 22-3-3-10. The average
7 weekly wages for such a student shall be calculated as provided
8 in subsection (d)(4).

9 (4) The rights and remedies granted in this subsection to a minor
10 under IC 22-3-2 through IC 22-3-6 on account of personal injury
11 or death by accident shall exclude all rights and remedies of the
12 minor, the minor's parents, or the minor's personal
13 representatives, dependents, or next of kin at common law,
14 statutory or otherwise, on account of the injury or death. This
15 subsection does not apply to minors who have reached seventeen
16 (17) years of age.

17 (d) "Average weekly wages" means the earnings of the injured
18 employee in the employment in which the employee was working at the
19 time of the injury during the period of fifty-two (52) weeks
20 immediately preceding the date of injury, divided by fifty-two (52),
21 except as follows:

22 (1) If the injured employee lost seven (7) or more calendar days
23 during this period, although not in the same week, then the
24 earnings for the remainder of the fifty-two (52) weeks shall be
25 divided by the number of weeks and parts thereof remaining
26 after the time lost has been deducted.

27 (2) Where the employment prior to the injury extended over a
28 period of less than fifty-two (52) weeks, the method of dividing
29 the earnings during that period by the number of weeks and parts
30 thereof during which the employee earned wages shall be
31 followed, if results just and fair to both parties will be obtained.
32 Where by reason of the shortness of the time during which the
33 employee has been in the employment of the employee's
34 employer or of the casual nature or terms of the employment it
35 is impracticable to compute the average weekly wages, as
36 defined in this subsection, regard shall be had to the average
37 weekly amount which during the fifty-two (52) weeks previous
38 to the injury was being earned by a person in the same grade

- 1 employed at the same work by the same employer or, if there is
2 no person so employed, by a person in the same grade employed
3 in the same class of employment in the same district.
- 4 (3) Wherever allowances of any character made to an employee
5 in lieu of wages are a specified part of the wage contract, they
6 shall be deemed a part of his earnings.
- 7 (4) In computing the average weekly wages to be used in
8 calculating an award for permanent impairment under
9 IC 22-3-3-10 for a student employee in an approved training
10 program under IC 20-10.1-6-7, the following formula shall be
11 used. Calculate the product of:
- 12 (A) the student employee's hourly wage rate; multiplied by
13 (B) forty (40) hours.
- 14 The result obtained is the amount of the average weekly wages
15 for the student employee.
- 16 (e) "Injury" and "personal injury" mean only injury by accident
17 arising out of and in the course of the employment and do not include
18 a disease in any form except as it results from the injury.
- 19 (f) "Billing review service" refers to a person or an entity that
20 reviews a medical service provider's bills or statements for the purpose
21 of determining pecuniary liability. The term includes an employer's
22 worker's compensation insurance carrier if the insurance carrier
23 performs such a review.
- 24 (g) "Billing review standard" means the data used by a billing
25 review service to determine pecuniary liability.
- 26 (h) "Community" means a geographic service area based on zip
27 code districts defined by the United States Postal Service according to
28 the following groupings:
- 29 (1) The geographic service area served by zip codes with the first
30 three (3) digits 463 and 464.
- 31 (2) The geographic service area served by zip codes with the first
32 three (3) digits 465 and 466.
- 33 (3) The geographic service area served by zip codes with the first
34 three (3) digits 467 and 468.
- 35 (4) The geographic service area served by zip codes with the first
36 three (3) digits 469 and 479.
- 37 (5) The geographic service area served by zip codes with the first
38 three (3) digits 460, 461 (except 46107), and 473.

1 (6) The geographic service area served by the 46107 zip code
2 and zip codes with the first three (3) digits 462.

3 (7) The geographic service area served by zip codes with the first
4 three (3) digits 470, 471, 472, 474, and 478.

5 (8) The geographic service area served by zip codes with the first
6 three (3) digits 475, 476, and 477.

7 (i) "Medical service provider" refers to a person or an entity that
8 provides medical services, treatment, or supplies to an employee under
9 IC 22-3-2 through IC 22-3-6.

10 (j) "Pecuniary liability" means the responsibility of an employer
11 or the employer's insurance carrier for the payment of the charges for
12 each specific service or product for human medical treatment provided
13 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
14 less than the charges made by medical service providers at the eightieth
15 percentile in the same community for like services or products.

16 SECTION 3. IC 22-3-7-9, AS AMENDED BY P.L.258-1997(ss),
17 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 APRIL 1, 1998]: Sec. 9. (a) As used in this chapter, "employer"
19 includes the state and any political subdivision, any municipal
20 corporation within the state, any individual or the legal representative
21 of a deceased individual, firm, association, limited liability company,
22 or corporation or the receiver or trustee of the same, using the services
23 of another for pay. If the employer is insured, the term includes his
24 insurer so far as applicable. However, the inclusion of an employer's
25 insurer within this definition does not allow an employer's insurer to
26 avoid payment for services rendered to an employee with the approval
27 of the employer.

28 (b) As used in this chapter, "employee" means every person,
29 including a minor, in the service of another, under any contract of hire
30 or apprenticeship written or implied, except one whose employment is
31 both casual and not in the usual course of the trade, business,
32 occupation, or profession of the employer. For purposes of this chapter
33 the following apply:

34 (1) Any reference to an employee who has suffered disablement,
35 when the employee is dead, also includes his legal
36 representative, dependents, and other persons to whom
37 compensation may be payable.

38 (2) An owner of a sole proprietorship may elect to include

1 himself as an employee under this chapter if he is actually
 2 engaged in the proprietorship business. If the owner makes this
 3 election, he must serve upon his insurance carrier and upon the
 4 board written notice of the election. No owner of a sole
 5 proprietorship may be considered an employee under this
 6 chapter unless the notice has been received. ~~If the owner of a~~
 7 ~~sole proprietorship is an independent contractor in the~~
 8 ~~construction trades and does not make the election provided~~
 9 ~~under this subdivision, the owner must obtain an affidavit of~~
 10 ~~exemption under IC 22-3-7-34.5.~~

11 (3) A partner in a partnership may elect to include himself as an
 12 employee under this chapter if he is actually engaged in the
 13 partnership business. If a partner makes this election, he must
 14 serve upon his insurance carrier and upon the board written
 15 notice of the election. No partner may be considered an
 16 employee under this chapter until the notice has been received.
 17 ~~If a partner in a partnership is an independent contractor in the~~
 18 ~~construction trades and does not make the election provided~~
 19 ~~under this subdivision, the partner must obtain an affidavit of~~
 20 ~~exemption under IC 22-3-7-34.5.~~

21 (4) Real estate professionals are not employees under this
 22 chapter if:

- 23 (A) they are licensed real estate agents;
- 24 (B) substantially all their remuneration is directly related to
- 25 sales volume and not the number of hours worked; and
- 26 (C) they have written agreements with real estate brokers
- 27 stating that they are not to be treated as employees for tax
- 28 purposes.

29 ~~(5) A person is an independent contractor in the construction~~
 30 ~~trades and not an employee under this chapter if the person is an~~
 31 ~~independent contractor under the guidelines of the United States~~
 32 ~~Internal Revenue Service.~~

33 ~~(6)~~ (5) An owner-operator that provides a motor vehicle and the
 34 services of a driver under a written contract that is subject to
 35 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
 36 carrier is not an employee of the motor carrier for purposes of
 37 this chapter. The owner-operator may elect to be covered and
 38 have the owner-operator's drivers covered under a worker's

1 compensation insurance policy or authorized self-insurance that
2 insures the motor carrier if the owner-operator pays the
3 premiums as requested by the motor carrier. An election by an
4 owner-operator under this subdivision does not terminate the
5 independent contractor status of the owner-operator for any
6 purpose other than the purpose of this subdivision.

7 (c) As used in this chapter, "minor" means an individual who has
8 not reached seventeen (17) years of age. A minor employee shall be
9 considered as being of full age for all purposes of this chapter.
10 However, if the employee is a minor who, at the time of the last
11 exposure, is employed, required, suffered, or permitted to work in
12 violation of the child labor laws of this state, the amount of
13 compensation and death benefits, as provided in this chapter, shall be
14 double the amount which would otherwise be recoverable. The
15 insurance carrier shall be liable on its policy for one-half (1/2) of the
16 compensation or benefits that may be payable on account of the
17 disability or death of the minor, and the employer shall be wholly liable
18 for the other one-half (1/2) of the compensation or benefits. If the
19 employee is a minor who is not less than sixteen (16) years of age and
20 who has not reached seventeen (17) years of age, and who at the time
21 of the last exposure is employed, suffered, or permitted to work at any
22 occupation which is not prohibited by law, the provisions of this
23 subsection prescribing double the amount otherwise recoverable do not
24 apply. The rights and remedies granted to a minor under this chapter on
25 account of disease shall exclude all rights and remedies of the minor,
26 his parents, his personal representatives, dependents, or next of kin at
27 common law, statutory or otherwise, on account of any disease.

28 (d) This chapter does not apply to casual laborers as defined in
29 subsection (b), nor to farm or agricultural employees, nor to household
30 employees, nor to railroad employees engaged in train service as
31 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or
32 foremen in charge of yard engines and helpers assigned thereto, nor to
33 their employers with respect to these employees. Also, this chapter
34 does not apply to employees or their employers with respect to
35 employments in which the laws of the United States provide for
36 compensation or liability for injury to the health, disability, or death by
37 reason of diseases suffered by these employees.

38 (e) As used in this chapter, "disablement" means the event of

1 becoming disabled from earning full wages at the work in which the
2 employee was engaged when last exposed to the hazards of the
3 occupational disease by the employer from whom he claims
4 compensation or equal wages in other suitable employment, and
5 "disability" means the state of being so incapacitated.

6 (f) For the purposes of this chapter, no compensation shall be
7 payable for or on account of any occupational diseases unless
8 disablement, as defined in subsection (e), occurs within two (2) years
9 after the last day of the last exposure to the hazards of the disease
10 except for the following:

11 (1) In all cases of occupational diseases caused by the inhalation
12 of silica dust or coal dust, no compensation shall be payable
13 unless disablement, as defined in subsection (e), occurs within
14 three (3) years after the last day of the last exposure to the
15 hazards of the disease.

16 (2) In all cases of occupational disease caused by the exposure
17 to radiation, no compensation shall be payable unless
18 disablement, as defined in subsection (e), occurs within two (2)
19 years from the date on which the employee had knowledge of the
20 nature of his occupational disease or, by exercise of reasonable
21 diligence, should have known of the existence of such disease
22 and its causal relationship to his employment.

23 (3) In all cases of occupational diseases caused by the inhalation
24 of asbestos dust, no compensation shall be payable unless
25 disablement, as defined in subsection (e), occurs within three (3)
26 years after the last day of the last exposure to the hazards of the
27 disease if the last day of the last exposure was before July 1,
28 1985.

29 (4) In all cases of occupational disease caused by the inhalation
30 of asbestos dust in which the last date of the last exposure occurs
31 on or after July 1, 1985, and before July 1, 1988, no
32 compensation shall be payable unless disablement, as defined in
33 subsection (e), occurs within twenty (20) years after the last day
34 of the last exposure.

35 (5) In all cases of occupational disease caused by the inhalation
36 of asbestos dust in which the last date of the last exposure occurs
37 on or after July 1, 1988, no compensation shall be payable unless
38 disablement (as defined in subsection (e)) occurs within

1 thirty-five (35) years after the last day of the last exposure.

2 (g) For the purposes of this chapter, no compensation shall be
3 payable for or on account of death resulting from any occupational
4 disease unless death occurs within two (2) years after the date of
5 disablement. However, this subsection does not bar compensation for
6 death:

7 (1) where death occurs during the pendency of a claim filed by
8 an employee within two (2) years after the date of disablement
9 and which claim has not resulted in a decision or has resulted in
10 a decision which is in process of review or appeal; or

11 (2) where, by agreement filed or decision rendered, a
12 compensable period of disability has been fixed and death occurs
13 within two (2) years after the end of such fixed period, but in no
14 event later than three hundred (300) weeks after the date of
15 disablement.

16 (h) As used in this chapter, "billing review service" refers to a
17 person or an entity that reviews a medical service provider's bills or
18 statements for the purpose of determining pecuniary liability. The term
19 includes an employer's worker's compensation insurance carrier if the
20 insurance carrier performs such a review.

21 (i) As used in this chapter, "billing review standard" means the
22 data used by a billing review service to determine pecuniary liability.

23 (j) As used in this chapter, "community" means a geographic
24 service area based on zip code districts defined by the United States
25 Postal Service according to the following groupings:

26 (1) The geographic service area served by zip codes with the first
27 three (3) digits 463 and 464.

28 (2) The geographic service area served by zip codes with the first
29 three (3) digits 465 and 466.

30 (3) The geographic service area served by zip codes with the first
31 three (3) digits 467 and 468.

32 (4) The geographic service area served by zip codes with the first
33 three (3) digits 469 and 479.

34 (5) The geographic service area served by zip codes with the first
35 three (3) digits 460, 461 (except 46107), and 473.

36 (6) The geographic service area served by the 46107 zip code
37 and zip codes with the first three (3) digits 462.

38 (7) The geographic service area served by zip codes with the first

1 three (3) digits 470, 471, 472, 474, and 478.

2 (8) The geographic service area served by zip codes with the first
3 three (3) digits 475, 476, and 477.

4 (k) As used in this chapter, "medical service provider" refers to a
5 person or an entity that provides medical services, treatment, or
6 supplies to an employee under this chapter.

7 (l) As used in this chapter, "pecuniary liability" means the
8 responsibility of an employer or the employer's insurance carrier for the
9 payment of the charges for each specific service or product for human
10 medical treatment provided under this chapter in a defined community,
11 equal to or less than the charges made by medical service providers at
12 the eightieth percentile in the same community for like services or
13 products.

14 SECTION 4. IC 27-1-3-28, AS AMENDED BY P.L.252-1995,
15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 1998]: Sec. 28. (a) The department of insurance fund is
17 established for the ~~purpose~~ **following purposes:**

18 (1) ~~of Providing To provide~~ supplemental funding for the
19 operations of the department of insurance.

20 (2) **To pay the costs of hiring and employing staff.**

21 (3) **To provide staff salary differentials as necessary to**
22 **equalize the average salaries and staffing levels of the**
23 **department of insurance with the average salaries and**
24 **staffing levels reported in the most recent Insurance**
25 **Department Resources Report published by the National**
26 **Association of Insurance Commissioners.**

27 (4) **To enable the department of insurance to maintain**
28 **accreditation by the National Association of Insurance**
29 **Commissioners.**

30 (b) The fund shall be administered by the commissioner. The
31 following shall be deposited in the department of insurance fund:

32 (1) Audit fees remitted by insurers to the commissioner under
33 IC 27-1-3-15(d).

34 (2) Filing fees remitted by insurers to the commissioner under
35 IC 27-1-3-15(e).

36 (3) Any other amounts remitted to the commissioner or the
37 department that are required by rule or statute to be deposited
38 into the department of insurance fund.

1 ~~(b)~~ (c) The expenses of administering the fund shall be paid from
2 money in the fund.

3 ~~(e)~~ (d) The treasurer of state shall invest the money in the fund not
4 currently needed to meet the obligations of the fund in the same
5 manner as other public funds may be invested. Interest that accrues
6 from these investments shall be deposited in the fund.

7 ~~(d)~~ (e) Money in the fund at the end of a particular fiscal year does
8 not revert to the state general fund.

9 ~~(e)~~ (f) There is annually appropriated to the department of
10 insurance, for the ~~purpose~~ **purposes** set forth in subsection (a), the
11 entire amount of money deposited in the fund in each year."

12 Page 2, after line 32, begin a new paragraph and insert:

13 "SECTION 6. THE FOLLOWING ARE REPEALED
14 [EFFECTIVE APRIL 1, 1998]: IC 6-3-7-5; IC 22-3-2-14.5;
15 IC 22-3-7-34.5.

16 SECTION 7. **An emergency is declared for this act.**"

17 Renumber all SECTIONS consecutively.

(Reference is to SB 224 as printed January 16, 1998.)

and when so amended that said bill do pass.

Representative Fry