

Adopted Rejected

COMMITTEE REPORT

YES: 8
NO: 7

MR. SPEAKER:

*Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1287, 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 2, between lines 22 and 23, begin a new paragraph and
- 2 insert:
- 3 "SECTION 2. 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 3. 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) ~~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)~~ (7) 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 4. 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) ~~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 5. IC 27-1-3-20 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE APRIL 1, 1998]: Sec. 20. (a) The
16 commissioner may issue a certificate of authority to any company when
17 it shall have complied with the requirements of the laws of this state so
18 as to entitle it to do business herein. The certificate shall be issued
19 under the seal of the department authorizing and empowering the
20 company to make the kind or kinds of insurance specified in the
21 certificate. No certificate of authority shall be issued until the
22 commissioner has found that:

- 23 ~~(a)~~ (1) the company has submitted a sound plan of operation; and
- 24 ~~(b)~~ (2) the general character and experience of the incorporators,
- 25 directors, and proposed officers is such as to assure reasonable
- 26 promise of a successful operation, based on the fact that such
- 27 persons are of known good character and that there is no good
- 28 reason to believe that they are affiliated, directly or indirectly,
- 29 through ownership, control, management, reinsurance
- 30 transactions, or other insurance or business relations with any
- 31 person or persons known to have been involved in the improper
- 32 manipulation of assets, accounts, or reinsurance.

33 No certificate of authority shall be denied, however, under subdivision
34 ~~(a)~~ (1) or ~~(b)~~ (2) until notice, hearing, and right of appeal has been
35 given as provided in IC 4-21.5.

36 (b) Every company possessing a certificate of authority shall notify
37 the commissioner of the election or appointment of every new director
38 or principal officer, within thirty (30) days thereafter. If in the

1 commissioner's opinion such a new principal officer or director does
 2 not meet the standards set forth in this section, he shall request that the
 3 company effect the removal of such persons from office. If such
 4 removal is not accomplished as promptly as under the circumstances
 5 and in the opinion of the commissioner is possible, then upon notice to
 6 both the company and such principal officer or director and after
 7 notice, hearing, and right of appeal pursuant to IC 4-21.5, and after a
 8 finding that such person is incompetent or untrustworthy or of known
 9 bad character, the commissioner may order the removal of such person
 10 from office and may, unless such removal is promptly accomplished,
 11 suspend the company's certificate of authority until there is compliance
 12 with such order.

13 (c) No company shall transact any business of insurance **or hold**
 14 **itself out as a company in the business of insurance** in this state
 15 **Indiana** until it shall have received a certificate of authority as
 16 prescribed in this section. ~~and~~

17 (d) No company shall make, **issue, deliver, sell, or advertise** any
 18 kind or kinds of insurance not specified in ~~such~~ **the company's**
 19 certificate of authority."

20 Page 14, line 1, after "received by the person," insert "**or**".

21 Page 14, line 1, after "recommended to the person," delete "or".

22 Page 14, line 2, delete "would have been sought by a prudent
 23 person,".

24 Page 20, between lines 13 and 14, begin a new paragraph and
 25 insert:

26 "(x) "**Preexisting condition**" means:

27 (1) **a condition that manifested itself within a period of six (6)**
 28 **months before the effective date of coverage in such a**
 29 **manner as would cause an ordinarily prudent person to seek**
 30 **diagnosis, care, or treatment; or**

31 (2) **medical advice or treatment was recommended or**
 32 **received within a period of six (6) months before the effective**
 33 **date of coverage."**

34 Page 20, line 14, delete "(x)" and insert "(y)".

35 Page 20, line 16, delete "(y)" and insert "(z)".

36 Page 20, line 23, delete "(z)" and insert "(aa)".

37 Page 20, line 26, delete "(aa)" and insert "(bb)".

38 Page 20, line 29, delete "(bb)" and insert "(cc)".

- 1 Page 20, line 34, delete "(cc)" and insert "(dd)".
- 2 Page 20, between lines 35 and 36, begin a new paragraph and
3 insert:
- 4 "SECTION 5. IC 27-8-10-2.1, AS AMENDED BY P.L.255-1995,
5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 APRIL 1, 1998]: Sec. 2.1. (a) There is established a nonprofit legal
7 entity to be referred to as the Indiana comprehensive health insurance
8 association, which must assure that health insurance is made available
9 throughout the year to each eligible Indiana resident applying to the
10 association for coverage. All carriers, health maintenance
11 organizations, limited service health maintenance organizations, and
12 self-insurers providing health insurance or health care services in
13 Indiana must be members of the association. The association shall
14 operate under a plan of operation established and approved under
15 subsection (c) and shall exercise its powers through a board of directors
16 established under this section.
- 17 (b) The board of directors of the association consists of ~~five (5) to~~
18 ~~nine (9)~~ **seven (7) members whose principal residence is in Indiana**
19 ~~selected by the members of the association, subject to approval by the~~
20 ~~commissioner. as follows:~~
- 21 **(1) The commissioner, or the designee of the commissioner,**
22 **who shall serve as chairperson of the board of directors.**
- 23 **(2) Three (3) policyholders or individuals representing**
24 **policyholders, appointed by the commissioner.**
- 25 **(3) Two (2) individuals representing association members,**
26 **appointed by the commissioner.**
- 27 **(4) The director of the budget agency, or the designee of the**
28 **director.**
- 29 To select the initial board of directors and to initially organize the
30 association, the commissioner shall give notice to all members in
31 Indiana of the time and place of the organizational meeting. In
32 determining voting rights at the organizational meeting, each member
33 is entitled to one (1) vote in person or by proxy. If the board of
34 directors is not selected within sixty (60) days after the organizational
35 meeting, the commissioner shall appoint the initial board. In approving
36 or selecting members of the board, the commissioner shall consider
37 whether all members are fairly represented. Members of the board **who**
38 **are not state employees** may be reimbursed from the money of the

1 association for expenses incurred by them as members but shall not be
2 otherwise compensated by the association for their services.

3 (c) The association shall submit to the commissioner a plan of
4 operation for the association and any amendments to the plan necessary
5 or suitable to assure the fair, reasonable, and equitable administration
6 of the association. The plan of operation becomes effective upon
7 approval in writing by the commissioner consistent with the date on
8 which the coverage under this chapter must be made available. The
9 commissioner shall, after notice and hearing, approve the plan of
10 operation if the plan is determined to be suitable to assure the fair,
11 reasonable, and equitable administration of the association and
12 provides for the sharing of association losses on an equitable,
13 proportionate basis among the member carriers, health maintenance
14 organizations, limited service health maintenance organizations, and
15 self-insurers. If the association fails to submit a suitable plan of
16 operation within one hundred eighty (180) days after the appointment
17 of the board of directors, or at any time thereafter the association fails
18 to submit suitable amendments to the plan, the commissioner shall
19 adopt rules under IC 4-22-2 necessary or advisable to implement this
20 section. These rules are effective until modified by the commissioner
21 or superseded by a plan submitted by the association and approved by
22 the commissioner. The plan of operation must:

- 23 (1) establish procedures for the handling and accounting of
- 24 assets and money of the association;
- 25 (2) establish the amount and method of reimbursing members of
- 26 the board;
- 27 (3) establish regular times and places for meetings of the board
- 28 of directors;
- 29 (4) establish procedures for records to be kept of all financial
- 30 transactions, and for the annual fiscal reporting to the
- 31 commissioner;
- 32 (5) establish procedures whereby selections for the board of
- 33 directors will be made and submitted to the commissioner for
- 34 approval;
- 35 (6) contain additional provisions necessary or proper for the
- 36 execution of the powers and duties of the association; and
- 37 (7) establish procedures for the periodic advertising of the
- 38 general availability of the health insurance coverages from the

1 association.

2 (d) The plan of operation may provide that any of the powers and
3 duties of the association be delegated to a person who will perform
4 functions similar to those of this association. A delegation under this
5 section takes effect only with the approval of both the board of
6 directors and the commissioner. The commissioner may not approve a
7 delegation unless the protections afforded to the insured are
8 substantially equivalent to or greater than those provided under this
9 chapter.

10 (e) The association has the general powers and authority
11 enumerated by this subsection in accordance with the plan of operation
12 approved by the commissioner under subsection (c). The association
13 has the general powers and authority granted under the laws of Indiana
14 to carriers licensed to transact the kinds of health care services or
15 health insurance described in section 1 of this chapter and also has the
16 specific authority, **subject to the approval of the commissioner**, to do
17 the following:

18 (1) Enter into contracts as are necessary or proper to carry out
19 this chapter.

20 (2) Sue or be sued, including taking any legal actions necessary
21 or proper for recovery of any assessments for, on behalf of, or
22 against participating carriers.

23 (3) Take legal action necessary to avoid the payment of improper
24 claims against the association or the coverage provided by or
25 through the association.

26 (4) Establish a medical review committee to determine the
27 reasonably appropriate level and extent of health care services in
28 each instance.

29 (5) Establish appropriate rates, scales of rates, rate classifications
30 and rating adjustments, such rates not to be unreasonable in
31 relation to the coverage provided and the reasonable operational
32 expenses of the association.

33 (6) Pool risks among members.

34 (7) Issue policies of insurance on an indemnity or provision of
35 service basis providing the coverage required by this chapter.

36 (8) Administer separate pools, separate accounts, or other plans
37 or arrangements considered appropriate for separate members or
38 groups of members.

- 1 (9) Operate and administer any combination of plans, pools, or
- 2 other mechanisms considered appropriate to best accomplish the
- 3 fair and equitable operation of the association.
- 4 (10) Appoint from among members appropriate legal, actuarial,
- 5 and other committees as necessary to provide technical
- 6 assistance in the operation of the association, policy and other
- 7 contract design, and any other function within the authority of
- 8 the association.
- 9 (11) Hire an independent consultant.
- 10 (12) Develop a method of advising applicants of the availability
- 11 of other coverages outside the association and may promulgate
- 12 a list of health conditions the existence of which would deem an
- 13 applicant eligible without demonstrating a rejection of coverage
- 14 by one (1) carrier.
- 15 (13) Provide for the use of managed care plans for insureds,
- 16 including the use of:
- 17 (A) health maintenance organizations; and
- 18 (B) preferred provider plans.
- 19 (14) Solicit bids directly from providers for coverage under this
- 20 chapter.
- 21 (f) Rates for coverages issued by the association may not be
- 22 unreasonable in relation to the benefits provided, the risk experience,
- 23 and the reasonable expenses of providing the coverage. Separate scales
- 24 of premium rates based on age apply for individual risks. Premium
- 25 rates must take into consideration the extra morbidity and
- 26 administration expenses, if any, for risks insured in the association. The
- 27 rates for a given classification may not be more than one hundred fifty
- 28 percent (150%) of the average premium rate for that class charged by
- 29 the five (5) carriers with the largest premium volume in the state during
- 30 the preceding calendar year. In determining the average rate of the five
- 31 (5) largest carriers, the rates charged by the carriers shall be actuarially
- 32 adjusted to determine the rate that would have been charged for
- 33 benefits identical to those issued by the association. All rates adopted
- 34 by the association must be submitted to the commissioner for approval.
- 35 (g) Following the close of the association's fiscal year, the
- 36 association shall determine the net premiums, the expenses of
- 37 administration, and the incurred losses for the year. Any net loss shall
- 38 be assessed by the association to all members in proportion to their

1 respective shares of total health insurance premiums, excluding
2 premiums for Medicaid contracts with the state of Indiana, received in
3 Indiana during the calendar year (or with paid losses in the year)
4 coinciding with or ending during the fiscal year of the association or
5 any other equitable basis as may be provided in the plan of operation.
6 For self-insurers, health maintenance organizations, and limited service
7 health maintenance organizations that are members of the association,
8 the proportionate share of losses must be determined through the
9 application of an equitable formula based upon claims paid, excluding
10 claims for Medicaid contracts with the state of Indiana, or the value of
11 services provided. In sharing losses, the association may abate or defer
12 in any part the assessment of a member, if, in the opinion of the board,
13 payment of the assessment would endanger the ability of the member
14 to fulfill its contractual obligations. The association may also provide
15 for interim assessments against members of the association if necessary
16 to assure the financial capability of the association to meet the incurred
17 or estimated claims expenses or operating expenses of the association
18 until the association's next fiscal year is completed. Net gains, if any,
19 must be held at interest to offset future losses or allocated to reduce
20 future premiums.

21 (h) The association shall conduct periodic audits to assure the
22 general accuracy of the financial data submitted to the association, and
23 the association shall have an annual audit of its operations by an
24 independent certified public accountant.

25 (i) The association is subject to examination by the department of
26 insurance under IC 27-1-3.1. The board of directors shall submit, not
27 later than March 30 of each year, a financial report for the preceding
28 calendar year in a form approved by the commissioner.

29 (j) All policy forms issued by the association must conform in
30 substance to prototype forms developed by the association, must in all
31 other respects conform to the requirements of this chapter, and must be
32 filed with and approved by the commissioner before their use.

33 (k) The association may not issue an association policy to any
34 individual who, on the effective date of the coverage applied for, does
35 not meet the eligibility requirements of section 5.1 of this chapter.

36 (l) The association shall pay an agent's referral fee of twenty-five
37 dollars (\$25) to each insurance agent who refers an applicant to the
38 association if that applicant is accepted.

1 (m) The association and the premium collected by the association
2 shall be exempt from the premium tax, the gross income tax, the
3 adjusted gross income tax, supplemental corporate net income, or any
4 combination of these, or similar taxes upon revenues or income that
5 may be imposed by the state.

6 (n) Members who after July 1, 1983, during any calendar year,
7 have paid one (1) or more assessments levied under this chapter may
8 either:

9 (1) take a credit against premium taxes, gross income taxes,
10 adjusted gross income taxes, supplemental corporate net income
11 taxes, or any combination of these, or similar taxes upon
12 revenues or income of member insurers that may be imposed by
13 the state, up to the amount of the taxes due for each calendar
14 year in which the assessments were paid and for succeeding
15 years until the aggregate of those assessments have been offset
16 by either credits against those taxes or refunds from the
17 association; or

18 (2) any member insurer may include in the rates for premiums
19 charged for insurance policies to which this chapter applies
20 amounts sufficient to recoup a sum equal to the amounts paid to
21 the association by the member less any amounts returned to the
22 member insurer by the association, and the rates shall not be
23 deemed excessive by virtue of including an amount reasonably
24 calculated to recoup assessments paid by the member.

25 (o) The association shall provide for the option of monthly
26 collection of premiums."

27 Page 21, line 19, delete ":".

28 Page 21, line 20, strike "(1)".

29 Page 21, run in lines 19 and 20.

30 Page 21, line 24, delete ";".

31 Page 21, line 24, strike "and" and insert ".".

32 Page 21, strike lines 25 through 28.

33 Page 22, strike lines 16 through 28.

34 Page 22, line 29, strike "(g)" and insert "(f)".

35 Page 22, line 29, strike "person applies for an association policy
36 within six (6)".

37 Page 22, strike line 30.

38 Page 22, line 31, strike "insurance arrangement and the".

1 Page 22, between lines 39 and 40, begin a new paragraph and
2 insert:

3 **"(g) Subsection (f) does not apply to a person, other than a**
4 **federally eligible individual, who had previous coverage under an**
5 **association policy and terminated the coverage or allowed the**
6 **coverage to terminate for a period exceeding ninety (90) days.**

7 **(h) Coverage for a preexisting condition of a person described**
8 **in subsection (g) may not be delayed or restricted to a date later**
9 **than six (6) months after the effective date. However, the six (6)**
10 **months must be reduced by one (1) month for each thirty (30) day**
11 **period of continuous coverage under a health insurance plan, as**
12 **defined in IC 27-8-15-28(a), that the person had during the twelve**
13 **(12) months immediately preceding enrollment."**

14 Page 22, line 40, strike "(h)" and insert "(i)".

15 Page 26, line 4, delete ":".

16 Page 26, strike lines 5 through 6.

17 Page 26, line 7, strike "during the".

18 Page 26, line 7, delete "six (6)".

19 Page 26, line 7, strike "months immediately preceding the".

20 Page 26, line 8, strike "effective date of enrollment in the plan;".

21 Page 26, line 8, delete "or".

22 Page 26, line 9, strike "(B)".

23 Page 26, run in lines 4 and 9.

24 Page 27, line 14, delete "that" and insert "**must:**

25 **(1) offer to any small employer all products that are**
26 **approved for sale in the small group market and that the**
27 **insurer is actively marketing; and**

28 **(2) accept any employer that applies for any of those**
29 **products."**

30 Page 27, delete lines 15 through 16.

31 Page 28, line 12, delete "IC 27-8-15-34 IS REPEALED
32 [EFFECTIVE APRIL" and insert "THE FOLLOWING ARE
33 REPEALED [EFFECTIVE APRIL 1, 1998]: IC 6-3-7-5;
34 IC 22-3-2-14.5; IC 22-3-7-34.5; IC 27-8-15-34."

- 1 Page 28, delete line 13.
- 2 Renumber all SECTIONS consecutively.
(Reference is to HB 1287 as introduced.)

and when so amended that said bill do pass.

Representative Fry