

HOUSE BILL No. 1007

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3-2; IC 22-3-7.

Synopsis: Worker's compensation. Provides that the worker's compensation and occupational diseases law applies to seamen on certain excursion boats for injuries and disablements occurring after June 30, 1998. Provides that payments made under the federal Jones Act to a disabled seaman shall be deducted from the total amount paid to the seaman under the worker's compensation and occupational diseases law.

Effective: July 1, 1998.

Stilwell

January 6, 1998, read first time and referred to Committee on Labor and Employment.



Introduced

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.

HOUSE BILL No. 1007

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 22-3-2-6 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1998]: Sec. 6. The rights and remedies granted
3 to an employee subject to IC 22-3-2 through IC 22-3-6 on account of
4 personal injury or death by accident shall exclude all other rights and
5 remedies of such employee, the employee's personal representatives,
6 dependents, or next of kin, at common law or otherwise, on account of
7 such injury or death, except for **the rights and** remedies available
8 under IC 5-2-6.1 **and section 19.1 of this chapter.**
- 9 SECTION 2. IC 22-3-2-19 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. **Except as**
11 **provided in section 19.1 of this chapter,** IC 22-3-2 through IC 22-3-6
12 shall not apply to employees and employers engaged in interstate or
13 foreign commerce wherein the laws of the United States provide for
14 compensation or for liability for injury or death by accident to such
15 employees.
- 16 SECTION 3. IC 22-3-2-19.1 IS ADDED TO THE INDIANA CODE
17 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY

1998

IN 1007—LS 6253/DI 79+



1 1, 1998]: **Sec. 19.1. (a) As used in this section, "Jones Act" refers to**
 2 **the Jones Act (46 U.S.C. 688) and any amendments and regulations**
 3 **related to the Act.**

4 **(b) As used in this section, "seaman" means an employee:**

5 **(1) of a self-propelled excursion boat located in a county that**
 6 **is contiguous to:**

7 **(A) Lake Michigan;**

8 **(B) the Ohio River; or**

9 **(C) Patoka Lake; and**

10 **(2) who is subject to coverage under the Jones Act.**

11 **(c) IC 22-3-2 through IC 22-3-6 apply to seamen for injuries**
 12 **occurring after June 30, 1998.**

13 **(d) The payments of disability compensation or medical benefits**
 14 **made under the Jones Act to a disabled seaman or the seaman's**
 15 **dependents shall be deducted from the total amount to be paid as**
 16 **compensation, as an award, or as medical benefits otherwise**
 17 **payable under IC 22-3-2 through IC 22-3-6. The deduction shall be**
 18 **made from and credited against the total payments as the**
 19 **payments would otherwise be due and payable under IC 22-3-2**
 20 **through IC 22-3-6.**

21 SECTION 4. IC 22-3-7-6 IS AMENDED TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 1998]: Sec. 6. **Except as provided in section**
 23 **9.1 of this chapter**, the rights and remedies granted under this chapter
 24 to an employee subject to this chapter on account of disablement or
 25 death by occupational disease arising out of and in the course of the
 26 employment shall exclude all other rights and remedies of such
 27 employee, his personal representatives, dependents, or next of kin, at
 28 common law or otherwise, on account of such disablement or death.

29 SECTION 5. IC 22-3-7-9, AS AMENDED BY P.L.258-1997(ss),
 30 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 1998]: Sec. 9. (a) As used in this chapter, "employer" includes
 32 the state and any political subdivision, any municipal corporation
 33 within the state, any individual or the legal representative of a deceased
 34 individual, firm, association, limited liability company, or corporation
 35 or the receiver or trustee of the same, using the services of another for
 36 pay. If the employer is insured, the term includes his insurer so far as
 37 applicable. However, the inclusion of an employer's insurer within this
 38 definition does not allow an employer's insurer to avoid payment for
 39 services rendered to an employee with the approval of the employer.

40 (b) As used in this chapter, "employee" means every person,
 41 including a minor, in the service of another, under any contract of hire
 42 or apprenticeship written or implied, except one whose employment is



1 both casual and not in the usual course of the trade, business,
2 occupation, or profession of the employer. For purposes of this chapter
3 the following apply:

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

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

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

28 (4) Real estate professionals are not employees under this chapter
29 if:

30 (A) they are licensed real estate agents;

31 (B) substantially all their remuneration is directly related to
32 sales volume and not the number of hours worked; and

33 (C) they have written agreements with real estate brokers
34 stating that they are not to be treated as employees for tax
35 purposes.

36 (5) A person is an independent contractor in the construction
37 trades and not an employee under this chapter if the person is an
38 independent contractor under the guidelines of the United States
39 Internal Revenue Service.

40 (6) An owner-operator that provides a motor vehicle and the
41 services of a driver under a written contract that is subject to
42 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor



1 carrier is not an employee of the motor carrier for purposes of this
 2 chapter. The owner-operator may elect to be covered and have the
 3 owner-operator's drivers covered under a worker's compensation
 4 insurance policy or authorized self-insurance that insures the
 5 motor carrier if the owner-operator pays the premiums as
 6 requested by the motor carrier. An election by an owner-operator
 7 under this subdivision does not terminate the independent
 8 contractor status of the owner-operator for any purpose other than
 9 the purpose of this subdivision.

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

31 (d) This chapter does not apply to **the following:**

- 32 (1) Casual laborers as defined in subsection (b). ~~nor to~~
 33 (2) Farm or agricultural employees. ~~nor to~~
 34 (3) Household employees. ~~nor to~~
 35 (4) Railroad employees engaged in train service as engineers,
 36 firemen, conductors, brakemen, flagmen, baggagemen, or
 37 foremen in charge of yard engines and helpers assigned thereto.
 38 ~~nor to their~~
 39 (5) Employers with respect to ~~these~~ **the** employees **listed in**
 40 **subdivision (4).** ~~Also;~~
 41 (6) **Except as provided in section 9.1 of this chapter, this**
 42 ~~chapter does not apply to~~ employees or their employers with



1 respect to employments in which the laws of the United States
2 provide for compensation or liability for injury to the health,
3 disability, or death by reason of diseases suffered by these
4 employees.

5 (e) As used in this chapter, "disablement" means the event of
6 becoming disabled from earning full wages at the work in which the
7 employee was engaged when last exposed to the hazards of the
8 occupational disease by the employer from whom he claims
9 compensation or equal wages in other suitable employment, and
10 "disability" means the state of being so incapacitated.

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

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

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

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

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

39 (5) In all cases of occupational disease caused by the inhalation
40 of asbestos dust in which the last date of the last exposure occurs
41 on or after July 1, 1988, no compensation shall be payable unless
42 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 an
 8 employee within two (2) years after the date of disablement and
 9 which claim has not resulted in a decision or has resulted in a
 10 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 data
 22 used by a billing review service to determine pecuniary liability.
- 23 (j) As used in this chapter, "community" means a geographic service
 24 area based on zip code districts defined by the United States Postal
 25 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 and
 37 zip codes with the first three (3) digits 462.
- 38 (7) The geographic service area served by zip codes with the first
 39 three (3) digits 470, 471, 472, 474, and 478.
- 40 (8) The geographic service area served by zip codes with the first
 41 three (3) digits 475, 476, and 477.
- 42 (k) As used in this chapter, "medical service provider" refers to a



1 person or an entity that provides medical services, treatment, or
2 supplies to an employee under this chapter.

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

10 SECTION 6. IC 22-3-7-9.1 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 1998]: **Sec. 9.1. (a) As used in this section, "Jones Act" refers to**
13 **the Jones Act (46 U.S.C. 688) and any amendments and regulations**
14 **related to the Act.**

15 (b) As used in this section, "seaman" means an employee:

16 (1) of a self-propelled excursion boat located in a county that
17 is contiguous to:

18 (A) Lake Michigan;

19 (B) the Ohio River; or

20 (C) Patoka Lake; and

21 (2) who is subject to coverage under the Jones Act.

22 (c) This chapter applies to seamen for disablements occurring
23 after June 30, 1998.

24 (d) The payments of disability compensation or medical benefits
25 made under the Jones Act to a disabled seaman or the seaman's
26 dependents shall be deducted from the total amount to be paid as
27 compensation, as an award, or as medical benefits otherwise
28 payable under this chapter. The deduction shall be made from and
29 credited against the total payments as the payments would
30 otherwise be due and payable under this chapter.

