



February 3, 1999

HOUSE BILL No. 1728

DIGEST OF HB 1728 (Updated February 2, 1999 3:47 pm - DI 96)

Citations Affected: IC 22-3.

Synopsis: Disabled from trade compensation. Creates disabled from trade compensation. Provides that an employee who: (1) has an injury that results in a temporary total disability or a temporary partial impairment; and (2) is capable of performing work with permanent limitations or restrictions that prevents the employee from returning to the position the employee held before the employee's injury may receive compensation for the difference in average weekly earnings lost. Limits disabled from trade compensation to 52 consecutive weeks or 78 aggregate weeks. Provides a cap of \$762 per week for disabled from trade compensation. Makes a conforming amendment.

Effective: July 1, 1999.

Kersey, Liggett

January 26, 1999, read first time and referred to Committee on Labor and Employment.
February 2, 1999, amended, reported — Do Pass.

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HB 1728—LS 7388/DI 94+



February 3, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE BILL No. 1728

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 22-3-3-7 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) Compensation shall be
3 allowed on account of injuries producing only temporary total disability
4 to work or temporary partial disability to work beginning with the
5 eighth (8th) day of such disability except for medical benefits provided
6 in section 4 of the chapter. Compensation shall be allowed for the first
7 seven (7) calendar days only if the disability continues for longer than
8 twenty-one (21) days.

9 (b) The first weekly installment of compensation for temporary
10 disability is due fourteen (14) days after the disability begins. Not later
11 than fifteen (15) days from the date that the first installment of
12 compensation is due, the employer or the employer's insurance carrier
13 shall tender to the employee or to the employee's dependents, with all
14 compensation due, a properly prepared compensation agreement in a
15 form prescribed by the board. Whenever an employer or the employer's
16 insurance carrier denies or is not able to determine liability to pay
17 compensation or benefits, the employer or the employer's insurance

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1 carrier shall notify the worker's compensation board and the employee
 2 in writing on a form prescribed by the worker's compensation board not
 3 later than thirty (30) days after the employer's knowledge of the
 4 claimed injury. If a determination of liability cannot be made within
 5 thirty (30) days, the worker's compensation board may approve an
 6 additional thirty (30) days upon a written request of the employer or the
 7 employer's insurance carrier that sets forth the reasons that the
 8 determination could not be made within thirty (30) days and states the
 9 facts or circumstances that are necessary to determine liability within
 10 the additional thirty (30) days. More than thirty (30) days of additional
 11 time may be approved by the worker's compensation board upon the
 12 filing of a petition by the employer or the employer's insurance carrier
 13 that sets forth:

- 14 (1) the extraordinary circumstances that have precluded a
- 15 determination of liability within the initial sixty (60) days;
- 16 (2) the status of the investigation on the date the petition is filed;
- 17 (3) the facts or circumstances that are necessary to make a
- 18 determination; and
- 19 (4) a timetable for the completion of the remaining investigation.

20 An employer who fails to comply with this section is subject to a civil
 21 penalty of fifty dollars (\$50), to be assessed and collected by the board
 22 upon notice and hearing. Civil penalties collected under this section
 23 shall be deposited in the state general fund.

24 (c) Once begun, temporary total disability benefits may not be
 25 terminated by the employer unless:

- 26 (1) the employee has returned to any employment;
- 27 (2) the employee has died;
- 28 (3) the employee has refused to undergo a medical examination
- 29 under section 6 of this chapter or has refused to accept suitable
- 30 employment under section 11 of this chapter;
- 31 (4) the employee has received five hundred (500) weeks of
- 32 temporary total disability benefits or has been paid the maximum
- 33 compensation allowed under section 22 of this chapter; **or**
- 34 (5) the employee is unable or unavailable to work for reasons
- 35 unrelated to the compensable injury; **or**
- 36 **(6) the employee returns to work with limitations or**
- 37 **restrictions, and the employer converts temporary total**
- 38 **disability or temporary partial disability compensation into**
- 39 **disabled from trade compensation under section 33 of this**
- 40 **chapter.**

41 In all other cases the employer must notify the employee in writing of
 42 the employer's intent to terminate the payment of temporary total



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1 disability benefits and of the availability of employment, if any, on a
 2 form approved by the board. If the employee disagrees with the
 3 proposed termination, the employee must give written notice of
 4 disagreement to the board and the employer within seven (7) days after
 5 receipt of the notice of intent to terminate benefits. If the board and
 6 employer do not receive a notice of disagreement under this section,
 7 the employee's temporary total disability benefits shall be terminated.
 8 Upon receipt of the notice of disagreement, the board shall immediately
 9 contact the parties, which may be by telephone or other means, and
 10 attempt to resolve the disagreement. If the board is unable to resolve
 11 the disagreement within ten (10) days of receipt of the notice of
 12 disagreement, the board shall immediately arrange for an evaluation of
 13 the employee by an independent medical examiner. The independent
 14 medical examiner shall be selected by mutual agreement of the parties
 15 or, if the parties are unable to agree, appointed by the board under
 16 IC 22-3-4-11. If the independent medical examiner determines that the
 17 employee is no longer temporarily disabled or is still temporarily
 18 disabled but can return to employment that the employer has made
 19 available to the employee, or if the employee fails or refuses to appear
 20 for examination by the independent medical examiner, temporary total
 21 disability benefits may be terminated. If either party disagrees with the
 22 opinion of the independent medical examiner, the party shall apply to
 23 the board for a hearing under IC 22-3-4-5.

24 (d) An employer is not required to continue the payment of
 25 temporary total disability benefits for more than fourteen (14) days
 26 after the employer's proposed termination date unless the independent
 27 medical examiner determines that the employee is temporarily disabled
 28 and unable to return to any employment that the employer has made
 29 available to the employee.

30 (e) If it is determined that as a result of this section temporary total
 31 disability benefits were overpaid, the overpayment shall be deducted
 32 from any benefits due the employee under section 10 of this chapter
 33 and, if there are no benefits due the employee or the benefits due the
 34 employee do not equal the amount of the overpayment, the employee
 35 shall be responsible for paying any overpayment which cannot be
 36 deducted from benefits due the employee.

37 SECTION 2. IC 22-3-3-33 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 1999]: **Sec. 33. (a) If an employee:**

- 40 **(1) receives an injury that results in a temporary total**
 41 **disability or a temporary partial disability; and**
 42 **(2) is capable of performing work with permanent limitations**



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1 or restrictions that prevent the employee from returning to
2 the position the employee held before the employee's injury;
3 the employee may receive disabled from trade compensation.

4 (b) An employee may receive disabled from trade compensation
5 for a period not to exceed:

6 (1) fifty-two (52) consecutive weeks; or

7 (2) seventy-eight (78) aggregate weeks.

8 (c) An employee is entitled to receive disabled from trade
9 compensation in a weekly amount equal to STEP FOUR of the
10 following formula:

11 STEP ONE: Determine the employee's average weekly
12 earnings from employment with limitations or restrictions
13 that is entered after the employee's injury, if any.

14 STEP TWO: Determine the employee's average weekly
15 earnings from employment before the employee's injury.

16 STEP THREE: Determine the greater of:

17 (A) the STEP TWO result minus the STEP ONE result; or

18 (B) zero (0).

19 STEP FOUR: Determine the lesser of:

20 (A) the STEP THREE result; or

21 (B) seven hundred sixty-two dollars (\$762).

22 (d) Not later than sixty (60) days after the employee's release to
23 return to work with restrictions or limitations, the employee must
24 receive notice from the employer on a form provided by the board
25 that informs the employee that the employee has been released to
26 work with limitations or restrictions. The notice must include:

27 (1) an explanation of the limitations or restrictions placed on
28 the employee;

29 (2) the amount of disabled from trade compensation the
30 employee has been awarded; and

31 (3) information for the employee regarding the terms of this
32 section.

33 (e) Disabled from trade compensation is in addition to any other
34 compensation awarded to an employee as a result of a temporary
35 total disability or a permanent partial impairment.

36 (f) An employer may unilaterally convert an award of
37 compensation for a temporary total disability or a temporary
38 partial disability into disabled from trade compensation by filing
39 a copy of the notice required under subsection (d) with the board.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1728, 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 2, line 38, delete "benefits" and insert "**or temporary partial disability compensation**".

Page 3, line 40, delete "**permanent**" and insert "**temporary**".

Page 3, line 40, after ";" insert "**and**".

Page 3, line 41, after "with" insert "**permanent**".

Page 4, line 1, delete "**and**".

Page 4, delete line 2.

Page 4, line 13, delete "." and insert "**, if any.**".

Page 4, line 36, delete "benefits" and insert "**compensation**".

Page 4, line 37, delete "permanent" and insert "**temporary**".

and when so amended that said bill do pass.

(Reference is to HB 1728 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 4.

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