



February 9, 1999

HOUSE BILL No. 1928

DIGEST OF HB 1928 (Updated February 8, 1999 6:39 pm - DI 44)

Citations Affected: IC 22-3; IC 27-8.

Synopsis: School corporation employees worker's compensation benefits. Provides that an individual employed by a school corporation who performs secondary casual employment during the hours that the employee is not scheduled to work for the school corporation is not included in the definition of employee for purposes of worker's compensation and the occupational diseases law. Provides for continuation of health care benefits when a teacher or employee of a school corporation has exhausted health care benefits under worker's compensation. Includes a plan of self-insurance within the scope of an insurance policy for a school corporation worker's compensation and industrial disease coverage. Provides that a group health plan may not exclude injuries that occur in the course of activities for wage or employment, except to the extent that they are covered by the worker's compensation laws.

Effective: July 1, 1999.

Cheney

January 26, 1999, read first time and referred to Committee on Labor and Employment.
February 8, 1999, amended, reported — Do Pass.

HB 1928—LS 7895/DI 96+



C
O
P
Y

February 9, 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.

C
O
P
Y

HOUSE BILL No. 1928

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

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

1 SECTION 1. IC 22-3-3-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 5. The pecuniary liability of the
3 employer for medical, surgical, hospital and nurse service herein
4 required shall be limited to such charges as prevail as provided under
5 IC 22-3-6-1(j), in the same community (as defined in IC 22-3-6-1(h))
6 for a like service or product to injured persons. The employee and the
7 employee's estate do not have liability to a health care provider for
8 payment for services obtained under IC 22-3-3-4. The right to order
9 payment for all services provided under IC 22-3-2 through IC 22-3-6
10 is solely with the board. **Subject to the exception in IC 27-8-5-15**, all
11 claims by a health care provider for payment for services are against
12 the employer and the employer's insurance carrier, if any, and must be
13 made with the board under IC 22-3-2 through IC 22-3-6. The worker's
14 compensation board may withhold the approval of the fees of the
15 attending physician in a case until the attending physician files a report

HB 1928—LS 7895/DI 96+



1 with the worker's compensation board on the form prescribed by the
2 board.

3 SECTION 2. IC 22-3-6-1 IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 1999]: Sec. 1. In IC 22-3-2 through IC 22-3-6,
5 unless the context otherwise requires:

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

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

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

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

37 (3) Any reference to an employee who has been injured, when the
38 employee is dead, also includes the employee's legal
39 representatives, dependents, and other persons to whom
40 compensation may be payable.

41 (4) An owner of a sole proprietorship may elect to include the
42 owner as an employee under IC 22-3-2 through IC 22-3-6 if the

C
O
P
Y



- 1 owner is actually engaged in the proprietorship business. If the
 2 owner makes this election, the owner must serve upon the owner's
 3 insurance carrier and upon the board written notice of the
 4 election. No owner of a sole proprietorship may be considered an
 5 employee under IC 22-3-2 through IC 22-3-6 until the notice has
 6 been received. If the owner of a sole proprietorship is an
 7 independent contractor in the construction trades and does not
 8 make the election provided under this subdivision, the owner
 9 must obtain an affidavit of exemption under IC 22-3-2-14.5.
- 10 (5) A partner in a partnership may elect to include the partner as
 11 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
 12 actually engaged in the partnership business. If a partner makes
 13 this election, the partner must serve upon the partner's insurance
 14 carrier and upon the board written notice of the election. No
 15 partner may be considered an employee under IC 22-3-2 through
 16 IC 22-3-6 until the notice has been received. If a partner in a
 17 partnership is an independent contractor in the construction trades
 18 and does not make the election provided under this subdivision,
 19 the partner must obtain an affidavit of exemption under
 20 IC 22-3-2-14.5.
- 21 (6) Real estate professionals are not employees under IC 22-3-2
 22 through IC 22-3-6 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 (7) A person is an independent contractor in the construction
 30 trades and not an employee under IC 22-3-2 through IC 22-3-6 if
 31 the person is an independent contractor under the guidelines of
 32 the United States Internal Revenue Service.
- 33 (8) 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 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be
 38 covered and have the owner-operator's drivers covered under a
 39 worker's compensation insurance policy or authorized
 40 self-insurance that insures the motor carrier if the owner-operator
 41 pays the premiums as requested by the motor carrier. An election
 42 by an owner-operator under this subdivision does not terminate

C
O
P
Y

1 the independent contractor status of the owner-operator for any
2 purpose other than the purpose of this subdivision.

3 (9) A member or manager in a limited liability company may elect
4 to include the member or manager as an employee under
5 IC 22-3-2 through IC 22-3-6 if the member or manager is actually
6 engaged in the limited liability company business. If a member or
7 manager makes this election, the member or manager must serve
8 upon the member's or manager's insurance carrier and upon the
9 board written notice of the election. A member or manager may
10 not be considered an employee under IC 22-3-2 through IC 22-3-6
11 until the notice has been received.

12 **An individual who is employed by a school corporation (as defined**
13 **in IC 21-6.1-1-7) and who performs secondary casual employment**
14 **(as defined in this subsection) during hours that the employee is not**
15 **scheduled to work for the school corporation is not an employee of**
16 **the secondary casual employer for purposes of IC 22-3-2 through**
17 **IC 22-3-6.**

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

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

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

37 (3) A minor employee who, at the time of the accident, is a
38 student performing services for an employer as part of an
39 approved program under IC 20-10.1-6-7 shall be considered a
40 full-time employee for the purpose of computing compensation
41 for permanent impairment under IC 22-3-3-10. The average
42 weekly wages for such a student shall be calculated as provided

C
O
P
Y



1 in subsection (d)(4).

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

10 (d) "Average weekly wages" means the earnings of the injured
11 employee in the employment in which the employee was working at the
12 time of the injury during the period of fifty-two (52) weeks
13 immediately preceding the date of injury, divided by fifty-two (52),
14 except as follows:

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

20 (2) Where the employment prior to the injury extended over a
21 period of less than fifty-two (52) weeks, the method of dividing
22 the earnings during that period by the number of weeks and parts
23 thereof during which the employee earned wages shall be
24 followed, if results just and fair to both parties will be obtained.
25 Where by reason of the shortness of the time during which the
26 employee has been in the employment of the employee's employer
27 or of the casual nature or terms of the employment it is
28 impracticable to compute the average weekly wages, as defined
29 in this subsection, regard shall be had to the average weekly
30 amount which during the fifty-two (52) weeks previous to the
31 injury was being earned by a person in the same grade employed
32 at the same work by the same employer or, if there is no person so
33 employed, by a person in the same grade employed in the same
34 class of employment in the same district.

35 (3) Wherever allowances of any character made to an employee
36 in lieu of wages are a specified part of the wage contract, they
37 shall be deemed a part of his earnings.

38 (4) In computing the average weekly wages to be used in
39 calculating an award for permanent impairment under
40 IC 22-3-3-10 for a student employee in an approved training
41 program under IC 20-10.1-6-7, the following formula shall be
42 used. Calculate the product of:

C
O
P
Y



- 1 (A) the student employee's hourly wage rate; multiplied by
2 (B) forty (40) hours.
3 The result obtained is the amount of the average weekly wages for
4 the student employee.
5 (e) "Injury" and "personal injury" mean only injury by accident
6 arising out of and in the course of the employment and do not include
7 a disease in any form except as it results from the injury.
8 (f) "Billing review service" refers to a person or an entity that
9 reviews a medical service provider's bills or statements for the purpose
10 of determining pecuniary liability. The term includes an employer's
11 worker's compensation insurance carrier if the insurance carrier
12 performs such a review.
13 (g) "Billing review standard" means the data used by a billing
14 review service to determine pecuniary liability.
15 (h) "Community" means a geographic service area based on zip
16 code districts defined by the United States Postal Service according to
17 the following groupings:
18 (1) The geographic service area served by zip codes with the first
19 three (3) digits 463 and 464.
20 (2) The geographic service area served by zip codes with the first
21 three (3) digits 465 and 466.
22 (3) The geographic service area served by zip codes with the first
23 three (3) digits 467 and 468.
24 (4) The geographic service area served by zip codes with the first
25 three (3) digits 469 and 479.
26 (5) The geographic service area served by zip codes with the first
27 three (3) digits 460, 461 (except 46107), and 473.
28 (6) The geographic service area served by the 46107 zip code and
29 zip codes with the first three (3) digits 462.
30 (7) The geographic service area served by zip codes with the first
31 three (3) digits 470, 471, 472, 474, and 478.
32 (8) The geographic service area served by zip codes with the first
33 three (3) digits 475, 476, and 477.
34 (i) "Medical service provider" refers to a person or an entity that
35 provides medical services, treatment, or supplies to an employee under
36 IC 22-3-2 through IC 22-3-6.
37 (j) "Pecuniary liability" means the responsibility of an employer or
38 the employer's insurance carrier for the payment of the charges for each
39 specific service or product for human medical treatment provided
40 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
41 less than the charges made by medical service providers at the eightieth
42 percentile in the same community for like services or products.

C
O
P
Y

1 SECTION 3. IC 22-3-7-9 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) As used in this chapter,
3 "employer" includes the state and any political subdivision, any
4 municipal corporation within the state, any individual or the legal
5 representative of a deceased individual, firm, association, limited
6 liability company, or corporation or the receiver or trustee of the same,
7 using the services of another for pay. If the employer is insured, the
8 term includes his insurer so far as applicable. However, the inclusion
9 of an employer's insurer within this definition does not allow an
10 employer's insurer to avoid payment for services rendered to an
11 employee with the approval of the employer.

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

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

22 (2) An owner of a sole proprietorship may elect to include himself
23 as an employee under this chapter if he is actually engaged in the
24 proprietorship business. If the owner makes this election, he must
25 serve upon his insurance carrier and upon the board written notice
26 of the election. No owner of a sole proprietorship may be
27 considered an employee under this chapter unless the notice has
28 been received. If the owner of a sole proprietorship is an
29 independent contractor in the construction trades and does not
30 make the election provided under this subdivision, the owner
31 must obtain an affidavit of exemption under IC 22-3-7-34.5.

32 (3) A partner in a partnership may elect to include himself as an
33 employee under this chapter if he is actually engaged in the
34 partnership business. If a partner makes this election, he must
35 serve upon his insurance carrier and upon the board written notice
36 of the election. No partner may be considered an employee under
37 this chapter until the notice has been received. If a partner in a
38 partnership is an independent contractor in the construction trades
39 and does not make the election provided under this subdivision,
40 the partner must obtain an affidavit of exemption under
41 IC 22-3-7-34.5.

42 (4) Real estate professionals are not employees under this chapter



- 1 if:
- 2 (A) they are licensed real estate agents;
- 3 (B) substantially all their remuneration is directly related to
- 4 sales volume and not the number of hours worked; and
- 5 (C) they have written agreements with real estate brokers
- 6 stating that they are not to be treated as employees for tax
- 7 purposes.
- 8 (5) A person is an independent contractor in the construction
- 9 trades and not an employee under this chapter if the person is an
- 10 independent contractor under the guidelines of the United States
- 11 Internal Revenue Service.
- 12 (6) An owner-operator that provides a motor vehicle and the
- 13 services of a driver under a written contract that is subject to
- 14 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
- 15 carrier is not an employee of the motor carrier for purposes of this
- 16 chapter. The owner-operator may elect to be covered and have the
- 17 owner-operator's drivers covered under a worker's compensation
- 18 insurance policy or authorized self-insurance that insures the
- 19 motor carrier if the owner-operator pays the premiums as
- 20 requested by the motor carrier. An election by an owner-operator
- 21 under this subdivision does not terminate the independent
- 22 contractor status of the owner-operator for any purpose other than
- 23 the purpose of this subdivision.
- 24 **An individual who is employed by a school corporation (as defined**
- 25 **in IC 21-6.1-1-7) and who performs secondary casual employment**
- 26 **(as defined in this subsection) during hours that the employee is not**
- 27 **scheduled to work for the school corporation is not an employee of**
- 28 **the secondary casual employer for purposes of IC 22-3-7.**
- 29 (c) As used in this chapter, "minor" means an individual who has
- 30 not reached seventeen (17) years of age. A minor employee shall be
- 31 considered as being of full age for all purposes of this chapter.
- 32 However, if the employee is a minor who, at the time of the last
- 33 exposure, is employed, required, suffered, or permitted to work in
- 34 violation of the child labor laws of this state, the amount of
- 35 compensation and death benefits, as provided in this chapter, shall be
- 36 double the amount which would otherwise be recoverable. The
- 37 insurance carrier shall be liable on its policy for one-half (1/2) of the
- 38 compensation or benefits that may be payable on account of the
- 39 disability or death of the minor, and the employer shall be wholly liable
- 40 for the other one-half (1/2) of the compensation or benefits. If the
- 41 employee is a minor who is not less than sixteen (16) years of age and
- 42 who has not reached seventeen (17) years of age, and who at the time



C
O
P
Y

1 of the last exposure is employed, suffered, or permitted to work at any
2 occupation which is not prohibited by law, the provisions of this
3 subsection prescribing double the amount otherwise recoverable do not
4 apply. The rights and remedies granted to a minor under this chapter on
5 account of disease shall exclude all rights and remedies of the minor,
6 his parents, his personal representatives, dependents, or next of kin at
7 common law, statutory or otherwise, on account of any disease.

8 (d) This chapter does not apply to casual laborers as defined in
9 subsection (b), nor to farm or agricultural employees, nor to household
10 employees, nor to railroad employees engaged in train service as
11 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or
12 foremen in charge of yard engines and helpers assigned thereto, nor to
13 their employers with respect to these employees. Also, this chapter
14 does not apply to employees or their employers with respect to
15 employments in which the laws of the United States provide for
16 compensation or liability for injury to the health, disability, or death by
17 reason of diseases suffered by these employees.

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

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

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

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

41 (3) In all cases of occupational diseases caused by the inhalation
42 of asbestos dust, no compensation shall be payable unless



C
O
P
Y

1 disablement, as defined in subsection (e), occurs within three (3)
2 years after the last day of the last exposure to the hazards of the
3 disease if the last day of the last exposure was before July 1, 1985.
4 (4) In all cases of occupational disease caused by the inhalation
5 of asbestos dust in which the last date of the last exposure occurs
6 on or after July 1, 1985, and before July 1, 1988, no compensation
7 shall be payable unless disablement, as defined in subsection (e),
8 occurs within twenty (20) years after the last day of the last
9 exposure.
10 (5) In all cases of occupational disease caused by the inhalation
11 of asbestos dust in which the last date of the last exposure occurs
12 on or after July 1, 1988, no compensation shall be payable unless
13 disablement (as defined in subsection (e)) occurs within
14 thirty-five (35) years after the last day of the last exposure.
15 (g) For the purposes of this chapter, no compensation shall be
16 payable for or on account of death resulting from any occupational
17 disease unless death occurs within two (2) years after the date of
18 disablement. However, this subsection does not bar compensation for
19 death:
20 (1) where death occurs during the pendency of a claim filed by an
21 employee within two (2) years after the date of disablement and
22 which claim has not resulted in a decision or has resulted in a
23 decision which is in process of review or appeal; or
24 (2) where, by agreement filed or decision rendered, a
25 compensable period of disability has been fixed and death occurs
26 within two (2) years after the end of such fixed period, but in no
27 event later than three hundred (300) weeks after the date of
28 disablement.
29 (h) As used in this chapter, "billing review service" refers to a
30 person or an entity that reviews a medical service provider's bills or
31 statements for the purpose of determining pecuniary liability. The term
32 includes an employer's worker's compensation insurance carrier if the
33 insurance carrier performs such a review.
34 (i) As used in this chapter, "billing review standard" means the data
35 used by a billing review service to determine pecuniary liability.
36 (j) As used in this chapter, "community" means a geographic service
37 area based on zip code districts defined by the United States Postal
38 Service according to the following groupings:
39 (1) The geographic service area served by zip codes with the first
40 three (3) digits 463 and 464.
41 (2) The geographic service area served by zip codes with the first
42 three (3) digits 465 and 466.

C
O
P
Y



- 1 (3) The geographic service area served by zip codes with the first
- 2 three (3) digits 467 and 468.
- 3 (4) The geographic service area served by zip codes with the first
- 4 three (3) digits 469 and 479.
- 5 (5) The geographic service area served by zip codes with the first
- 6 three (3) digits 460, 461 (except 46107), and 473.
- 7 (6) The geographic service area served by the 46107 zip code and
- 8 zip codes with the first three (3) digits 462.
- 9 (7) The geographic service area served by zip codes with the first
- 10 three (3) digits 470, 471, 472, 474, and 478.
- 11 (8) The geographic service area served by zip codes with the first
- 12 three (3) digits 475, 476, and 477.

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

16 (l) As used in this chapter, "pecuniary liability" means the
 17 responsibility of an employer or the employer's insurance carrier for the
 18 payment of the charges for each specific service or product for human
 19 medical treatment provided under this chapter in a defined community,
 20 equal to or less than the charges made by medical service providers at
 21 the eightieth percentile in the same community for like services or
 22 products.

23 SECTION 4. IC 22-3-7-17 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) During the
 25 period of disablement, the employer shall furnish or cause to be
 26 furnished, free of charge to the employee, an attending physician for
 27 the treatment of his occupational disease, and in addition thereto such
 28 surgical, hospital, and nursing services and supplies as the attending
 29 physician or the worker's compensation board may deem necessary. If
 30 the employee is requested or required by the employer to submit to
 31 treatment outside the county of employment, said employer shall also
 32 pay the reasonable expense of travel, food, and lodging necessary
 33 during the travel, but not to exceed the amount paid at the time of said
 34 travel by the state of Indiana to its employees.

35 (b) During the period of disablement resulting from the occupational
 36 disease, the employer shall furnish such physician, services, and
 37 supplies, and the worker's compensation board may, on proper
 38 application of either party, require that treatment by such physician and
 39 such services and supplies be furnished by or on behalf of the employer
 40 as the board may deem reasonably necessary. After an employee's
 41 occupational disease has been adjudicated by agreement or award on
 42 the basis of permanent partial impairment and within the statutory

COPY



1 period for review in such case as provided in section 27(i) of this
2 chapter, the employer may continue to furnish a physician or a surgeon
3 and other medical services and supplies, and the board may, within
4 such statutory period for review as provided in section 27(i) of this
5 chapter, on a proper application of either party, require that treatment
6 by such physician or surgeon and such services and supplies be
7 furnished by and on behalf of the employer as the board may deem
8 necessary to limit or reduce the amount and extent of such impairment.
9 The refusal of the employee to accept such services and supplies when
10 so provided by or on behalf of the employer, shall bar the employee
11 from all compensation otherwise payable during the period of such
12 refusal and his right to prosecute any proceeding under this chapter
13 shall be suspended and abated until such refusal ceases. The employee
14 must be served with a notice setting forth the consequences of the
15 refusal under this section. The notice must be in a form prescribed by
16 the worker's compensation board. No compensation for permanent total
17 impairment, permanent partial impairment, permanent disfigurement,
18 or death shall be paid or payable for that part or portion of such
19 impairment, disfigurement, or death which is the result of the failure of
20 such employee to accept such treatment, services, and supplies,
21 provided that an employer may at any time permit an employee to have
22 treatment for his disease or injury by spiritual means or prayer in lieu
23 of such physician, services, and supplies.

24 (c) Regardless of when it occurs, where a compensable occupational
25 disease results in the amputation of a body part, the enucleation of an
26 eye, or the loss of natural teeth, the employer shall furnish an
27 appropriate artificial member, braces, and prosthodontics. The cost of
28 repairs to or replacements for the artificial members, braces, or
29 prosthodontics that result from a compensable occupational disease
30 pursuant to a prior award and are required due to either medical
31 necessity or normal wear and tear, determined according to the
32 employee's individual use, but not abuse, of the artificial member,
33 braces, or prosthodontics, shall be paid from the second injury fund
34 upon order or award of the worker's compensation board. The
35 employee is not required to meet any other requirement for admission
36 to the second injury fund.

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

C
O
P
Y

1 nurse's services and supplies are procured within said period, the
2 reasonable cost of such services and supplies shall, subject to approval
3 of the worker's compensation board, be paid by the employer.

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

7 (1) binds the parties to medical care furnished by providers
8 selected by agreement before or after disablement; or

9 (2) makes the findings of a provider chosen in this manner
10 binding upon the parties.

11 (f) The employee and the employee's estate do not have liability to
12 a health care provider for payment for services obtained under this
13 section. The right to order payment for all services provided under this
14 chapter is solely with the board. **Subject to the exception in**
15 **IC 27-8-5-15**, all claims by a health care provider for payment for
16 services are against the employer and the employer's insurance carrier,
17 if any, and must be made with the board under this chapter.

18 SECTION 5. IC 27-8-5-15 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) No policy of
20 blanket accident and sickness insurance shall be delivered or issued for
21 delivery in this state unless it conforms to the requirements of this
22 section.

23 (1) A policy may be issued to any common carrier or to any
24 operator, owner or lessee of a means of transportation, who or
25 which shall be deemed the policyholder, covering a group of
26 persons who may become passengers defined by reference to their
27 travel status on such common carrier or such means of
28 transportation.

29 (2) A policy may be issued to an employer, who shall be deemed
30 the policyholder, covering any group of employees, dependents or
31 guests, defined by reference to specified hazards incident to an
32 activity or activities or operations of the policyholder.

33 (3) A policy may be issued to a college, school, or other
34 institution of learning, a school district or districts, or school
35 jurisdictional unit, or to the head, principal, or governing board of
36 any such educational unit, who or which shall be deemed the
37 policyholder, covering students, teachers, or employees.

38 (4) A policy may be issued to any religious, charitable,
39 recreational, educational, or civic organization, or branch thereof,
40 which shall be deemed the policyholder, covering any group of
41 members or participants defined by reference to specified hazards
42 incident to any activity or activities or operations sponsored or

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

supervised by such policyholder.
(5) A policy may be issued to a sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors.
(6) A policy may be issued to any volunteer fire department, first aid, emergency management, or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.
(7) A policy may be issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.
(8) A policy may be issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.
(9) A policy may be issued to cover any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.
(b) Each such policy shall contain in substance provisions which in the opinion of the commissioner are not less favorable to the policyholder and the individual insured than the following:
(1) A provision that the policy, including endorsements and a copy of the application, if any, of the policyholder and the persons insured shall constitute the entire contract between the parties, and that any statement made by the policyholder or by a person insured shall in absence of fraud, be deemed a misrepresentation and not a warranty, and that no such statements shall be used in defense to a claim under the policy, unless contained in a written application. Such person, his beneficiary, or assignee, shall have the right to make written request to the insurer for a copy of such application and the insurer shall, within fifteen (15) days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

application as evidence in any action based upon or involving any statements contained therein.

(2) A provision that written notice of sickness or of injury must be given to the insurer within twenty (20) days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate nor reduce any claim if it is shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(3) A provision that the insurer will furnish either to the claimant or to the policyholder for delivery to the claimant such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of fifteen (15) days after giving of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.

(4) A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety (90) days after the commencement of the period for which the insurer is liable and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within ninety (90) days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

(5) A provision that all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.

(6) A provision that the insurer at its own expense, shall have the right and opportunity to examine the person of the injured or sick individual when and so often as it may reasonably require during the pendency of claim under the policy and also the right and

C
O
P
Y



1 opportunity to make an autopsy where it is not prohibited by law.
 2 (7) A provision that no action at law or in equity shall be brought
 3 to recover under the policy prior to the expiration of sixty (60)
 4 days after written proof of loss has been furnished in accordance
 5 with the requirements of the policy and that no such action shall
 6 be brought after the expiration of three (3) years after the time
 7 written proof of loss is required to be furnished.

8 The insurer may omit from a policy any portion of any of the above
 9 provisions which is not applicable to that policy. An individual
 10 application need not be required from a person covered under a blanket
 11 accident and sickness policy, nor shall it be necessary for the insurer to
 12 furnish each person a certificate.

13 (c) All benefits under any blanket accident and sickness policy shall
 14 be payable to the person insured, or to the insured's designated
 15 beneficiary or beneficiaries, or to the insured's estate, except that if the
 16 person insured be a minor or otherwise not competent to give a valid
 17 release, such benefits may be made payable to the insured's parent,
 18 guardian, or other person actually supporting the insured. However, the
 19 policy may provide in substance that all or any portion of any benefits
 20 provided by any such policy on account of hospital, nursing, medical,
 21 or surgical services may, at the option of the insurer and unless the
 22 insured requests otherwise in writing not later than the time of filing
 23 proofs of such loss, be paid directly to the hospital or person rendering
 24 such services; but, the policy may not require that the service be
 25 rendered by a particular hospital or person. Payment so made shall
 26 discharge the insurer's obligations with respect to the amount of
 27 insurance so paid.

28 (d) This section applies only to policies delivered or issued for
 29 delivery in Indiana after August 19, 1975.

30 (e) **This subsection applies to policies or plans of self-insurance**
 31 **delivered or issued for delivery in Indiana after June 30, 1999. A**
 32 **policy or plan of self-insurance issued to a school district or school**
 33 **jurisdiction under subsection (a)(3) for coverage of:**

34 (1) **teachers and employees; and**

35 (2) **if coverage has been extended under section 18 of this**
 36 **chapter, to their family members and dependents;**

37 **shall contain a provision that when any worker's compensation**
 38 **coverage for medical expenses for a covered member has been**
 39 **exhausted, or has not been elected under IC 22-3-6-1 or**
 40 **IC 22-3-7-9, the policy or plan of self-insurance shall provide**
 41 **accident and sickness coverage in excess of the limit on worker's**
 42 **compensation coverage until all benefits of the group health and**



C
O
P
Y

1 **accident plan have been exhausted.**

2 SECTION 6. IC 27-8-5-19 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 19. (a) As used in this
4 chapter, "late enrollee" has the meaning set forth in 26 U.S.C.
5 9801(b)(3).

6 (b) A policy of group accident and sickness insurance may not be
7 issued to a group that has a legal situs in Indiana unless it contains in
8 substance:

- 9 (1) the provisions described in subsection (c); or
- 10 (2) provisions that, in the opinion of the commissioner, are:
 - 11 (A) more favorable to the persons insured; or
 - 12 (B) at least as favorable to the persons insured and more
13 favorable to the policyholder;

14 than the provisions set forth in subsection (c).

15 (c) The provisions referred to in subsection (b)(1) are as follows:

16 (1) A provision that the policyholder is entitled to a grace period
17 of thirty-one (31) days for the payment of any premium due
18 except the first, during which grace period the policy will
19 continue in force, unless the policyholder has given the insurer
20 written notice of discontinuance in advance of the date of
21 discontinuance and in accordance with the terms of the policy.
22 The policy may provide that the policyholder is liable to the
23 insurer for the payment of a pro rata premium for the time the
24 policy was in force during the grace period. A provision under
25 this subdivision may provide that the insurer is not obligated to
26 pay claims incurred during the grace period until the premium
27 due is received.

28 (2) A provision that the validity of the policy may not be
29 contested, except for nonpayment of premiums, after the policy
30 has been in force for two (2) years after its date of issue, and that
31 no statement made by a person covered under the policy relating
32 to the person's insurability may be used in contesting the validity
33 of the insurance with respect to which the statement was made,
34 unless:

- 35 (A) the insurance has not been in force for a period of two (2)
36 years or longer during the person's lifetime; or
- 37 (B) the statement is contained in a written instrument signed
38 by the insured person.

39 However, a provision under this subdivision may not preclude the
40 assertion at any time of defenses based upon a person's
41 ineligibility for coverage under the policy or based upon other
42 provisions in the policy.

C
O
P
Y



1 (3) A provision that a copy of the application, if there is one, of
 2 the policyholder must be attached to the policy when issued, that
 3 all statements made by the policyholder or by the persons insured
 4 are to be deemed representations and not warranties, and that no
 5 statement made by any person insured may be used in any contest
 6 unless a copy of the instrument containing the statement is or has
 7 been furnished to the insured person or, in the event of death or
 8 incapacity of the insured person, to the insured person's
 9 beneficiary or personal representative.

10 (4) A provision setting forth the conditions, if any, under which
 11 the insurer reserves the right to require a person eligible for
 12 insurance to furnish evidence of individual insurability
 13 satisfactory to the insurer as a condition to part or all of the
 14 person's coverage.

15 (5) A provision specifying any additional exclusions or limitations
 16 applicable under the policy with respect to a disease or physical
 17 condition of a person that existed before the effective date of the
 18 person's coverage under the policy and that is not otherwise
 19 excluded from the person's coverage by name or specific
 20 description effective on the date of the person's loss. An exclusion
 21 or limitation that must be specified in a provision under this
 22 subdivision:

23 (A) may apply only to a disease or physical condition for
 24 which medical advice, diagnosis, care, or treatment was
 25 received by the person, or recommended to the person, during
 26 the six (6) months before the enrollment date of the person's
 27 coverage; and

28 (B) may not apply to a loss incurred or disability beginning
 29 after the earlier of:

30 (i) the end of a continuous period of twelve (12) months
 31 beginning on or after the enrollment date of the person's
 32 coverage; or

33 (ii) the end of a continuous period of eighteen (18) months
 34 beginning on the enrollment date of the person's coverage if
 35 the person is a late enrollee.

36 (6) If premiums or benefits under the policy vary according to a
 37 person's age, a provision specifying an equitable adjustment of:

38 (A) premiums;

39 (B) benefits; or

40 (C) both premiums and benefits;

41 to be made if the age of a covered person has been misstated. A
 42 provision under this subdivision must contain a clear statement of

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

the method of adjustment to be used.
(7) A provision that the insurer will issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement that:
 (A) explains the insurance protection to which the person insured is entitled;
 (B) indicates to whom the insurance benefits are payable; and
 (C) explains any family member's or dependent's coverage under the policy.
(8) A provision stating that written notice of a claim must be given to the insurer within twenty (20) days after the occurrence or commencement of any loss covered by the policy, **subject to the exception in subsection 18**, but that a failure to give notice within the twenty (20) day period does not invalidate or reduce any claim if it can be shown that it was not reasonably possible to give notice within that period and that notice was given as soon as was reasonably possible.
(9) A provision stating that:
 (A) the insurer will furnish to the person making a claim, or to the policyholder for delivery to the person making a claim, forms usually furnished by the insurer for filing proof of loss; and
 (B) if the forms are not furnished within fifteen (15) days after the insurer received notice of a claim, the person making the claim will be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which the claim is made.
(10) A provision stating that:
 (A) in the case of a claim for loss of time for disability, written proof of the loss must be furnished to the insurer within ninety (90) days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of the disability must be furnished to the insurer at reasonable intervals as may be required by the insurer;
 (B) in the case of a claim for any other loss, written proof of the loss must be furnished to the insurer within ninety (90) days after the date of the loss; and
 (C) the failure to furnish proof within the time required under clause (A) or (B) does not invalidate or reduce any claim if it was not reasonably possible to furnish proof within that time,

C
O
P
Y



1 and if proof is furnished as soon as reasonably possible but
2 (except in case of the absence of legal capacity of the
3 claimant) no later than one (1) year from the time proof is
4 otherwise required under the policy.

5 (11) A provision that:

6 (A) all benefits payable under the policy (other than benefits
7 for loss of time) will be paid within forty-five (45) days after
8 the insurer receives all information required to determine
9 liability under the terms of the policy; and

10 (B) subject to due proof of loss, all accrued benefits under the
11 policy for loss of time will be paid not less frequently than
12 monthly during the continuance of the period for which the
13 insurer is liable, and any balance remaining unpaid at the
14 termination of the period for which the insurer is liable will be
15 paid as soon as possible after receipt of the proof of loss.

16 (12) A provision that benefits for loss of life of the person insured
17 are payable to the beneficiary designated by the person insured.
18 However, if the policy contains conditions pertaining to family
19 status, the beneficiary may be the family member specified by the
20 policy terms. In either case, payment of benefits for loss of life is
21 subject to the provisions of the policy if no designated or
22 specified beneficiary is living at the death of the person insured.
23 All other benefits of the policy are payable to the person insured.
24 The policy may also provide that if any benefit is payable to the
25 estate of a person, or to a person who is a minor or otherwise not
26 competent to give a valid release, the insurer may pay the benefit,
27 up to an amount of five thousand dollars (\$5,000), to any relative
28 by blood or connection by marriage of the person who is deemed
29 by the insurer to be equitably entitled to the benefit.

30 (13) A provision that the insurer has the right and must be
31 allowed the opportunity to:

32 (A) examine the person of the individual for whom a claim is
33 made under the policy when and as often as the insurer
34 reasonably requires during the pendency of the claim; and

35 (B) conduct an autopsy in case of death if it is not prohibited
36 by law.

37 (14) A provision that no action at law or in equity may be brought
38 to recover on the policy less than sixty (60) days after proof of
39 loss is filed in accordance with the requirements of the policy, and
40 that no action may be brought at all more than three (3) years after
41 the expiration of the time within which proof of loss is required
42 by the policy.

C
O
P
Y

1 (15) In the case of a policy insuring debtors, a provision that the
 2 insurer will furnish to the policyholder, for delivery to each debtor
 3 insured under the policy, a certificate of insurance describing the
 4 coverage and specifying that the benefits payable will first be
 5 applied to reduce or extinguish the indebtedness.

6 (16) If the policy provides that hospital or medical expense
 7 coverage of a dependent child of a group member terminates upon
 8 the child's attainment of the limiting age for dependent children
 9 set forth in the policy, a provision that the child's attainment of the
 10 limiting age does not terminate the hospital and medical coverage
 11 of the child while the child is:

12 (A) incapable of self-sustaining employment because of
 13 mental retardation or a physical disability; and

14 (B) chiefly dependent upon the group member for support and
 15 maintenance.

16 A provision under this subdivision may require that proof of the
 17 child's incapacity and dependency be furnished to the insurer by
 18 the group member within one hundred twenty (120) days of the
 19 child's attainment of the limiting age and, subsequently, at
 20 reasonable intervals during the two (2) years following the child's
 21 attainment of the limiting age. The policy may not require proof
 22 more than once per year in the time more than two (2) years after
 23 the child's attainment of the limiting age. This subdivision does
 24 not require an insurer to provide coverage to a mentally retarded
 25 or physically disabled child who does not satisfy the requirements
 26 of the group policy as to evidence of insurability or other
 27 requirements for coverage under the policy to take effect. In any
 28 case, the terms of the policy apply with regard to the coverage or
 29 exclusion from coverage of the child.

30 (17) A provision that complies with the group portability and
 31 guaranteed renewability provisions of the federal Health
 32 Insurance Portability and Accountability Act of 1996
 33 (P.L.104-191).

34 **(18) A provision that, if the covered member is subject to**
 35 **IC 27-8-5-15 (e), written notice of a claim or a potential claim**
 36 **must be given to the insurer within twenty (20) days after:**

37 **(A) notification from the worker's compensation insurance**
 38 **carrier that the benefits have been exhausted;**

39 **(B) entry of judgment against some person other than the**
 40 **employer and not in the same employ a legal liability to**
 41 **pay damages, as set forth in IC 22-3-2-13; or**

42 **(C) settlement with another party either with or without**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

suit, as set forth in IC 22-3-2-13.
(19) If the policy or plan of self-insurance is to provide group coverage to the employees of a school corporation (as defined in IC 21-6.1-1-7), a provision that the group health plan must cover secondary casual employment, as described in IC 22-3-6-1. The policy or plan of self-insurance may not contain a provision that excludes coverage for injuries incurred in the course of activities for wage or employment, except to the extent that the injuries are covered by IC 22-3.

(d) Subsection (c)(5), (c)(7), and (c)(12) do not apply to policies insuring the lives of debtors. The standard provisions required under section 3(a) of this chapter for individual accident and sickness insurance policies do not apply to group accident and sickness insurance policies.

(e) If any policy provision required under subsection (c) is in whole or in part inapplicable to or inconsistent with the coverage provided by an insurer under a particular form of policy, the insurer, with the approval of the commissioner, shall delete the provision from the policy or modify the provision in such a manner as to make it consistent with the coverage provided by the policy.

C
O
P
Y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1928, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-3-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. The pecuniary liability of the employer for medical, surgical, hospital and nurse service herein required shall be limited to such charges as prevail as provided under IC 22-3-6-1(j), in the same community (as defined in IC 22-3-6-1(h)) for a like service or product to injured persons. The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under IC 22-3-3-4. The right to order payment for all services provided under IC 22-3-2 through IC 22-3-6 is solely with the board. **Subject to the exception in IC 27-8-5-15**, all claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under IC 22-3-2 through IC 22-3-6. The worker's compensation board may withhold the approval of the fees of the attending physician in a case until the attending physician files a report with the worker's compensation board on the form prescribed by the board."

Page 3, line 38, after "employment" insert "**(as defined in this subsection)**".

Page 3, line 40, after "employee" insert "**of the secondary casual employer**".

Page 6, between lines 24 and 25, begin a new paragraph and insert:

"SECTION 3. IC 22-3-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. If the employer is insured, the term includes his insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer.

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire

HB 1928—LS 7895/DI 96+



C
O
P
Y

or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

- (1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes his legal representative, dependents, and other persons to whom compensation may be payable.
- (2) An owner of a sole proprietorship may elect to include himself as an employee under this chapter if he is actually engaged in the proprietorship business. If the owner makes this election, he must serve upon his insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-7-34.5.
- (3) A partner in a partnership may elect to include himself as an employee under this chapter if he is actually engaged in the partnership business. If a partner makes this election, he must serve upon his insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-7-34.5.
- (4) Real estate professionals are not employees under this chapter if:
 - (A) they are licensed real estate agents;
 - (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
 - (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.
- (5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.
- (6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to

C
O
P
Y



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

An individual who is employed by a school corporation (as defined in IC 21-6.1-1-7) and who performs secondary casual employment (as defined in this subsection) during hours that the employee is not scheduled to work for the school corporation is not an employee of the secondary casual employer for purposes of IC 22-3-7.

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

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter



C
O
P
Y

does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

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

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

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

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

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

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

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

C
O
P
Y

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

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

- (1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or
- (2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

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

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

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

- (1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.
- (4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.
- (5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.
- (6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.
- (7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.
- (8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a



C
O
P
Y

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

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

SECTION 4. IC 22-3-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. (a) During the period of disablement, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of his occupational disease, and in addition thereto such surgical, hospital, and nursing services and supplies as the attending physician or the worker's compensation board may deem necessary. If the employee is requested or required by the employer to submit to treatment outside the county of employment, said employer shall also pay the reasonable expense of travel, food, and lodging necessary during the travel, but not to exceed the amount paid at the time of said travel by the state of Indiana to its employees.

(b) During the period of disablement resulting from the occupational disease, the employer shall furnish such physician, services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by such physician and such services and supplies be furnished by or on behalf of the employer as the board may deem reasonably necessary. After an employee's occupational disease has been adjudicated by agreement or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27(i) of this chapter, the employer may continue to furnish a physician or a surgeon and other medical services and supplies, and the board may, within such statutory period for review as provided in section 27(i) of this chapter, on a proper application of either party, require that treatment by such physician or surgeon and such services and supplies be furnished by and on behalf of the employer as the board may deem necessary to limit or reduce the amount and extent of such impairment. The refusal of the employee to accept such services and supplies when so provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of such refusal and his right to prosecute any proceeding under this chapter shall be suspended and abated until such refusal ceases. The employee

C
O
P
Y



must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part or portion of such impairment, disfigurement, or death which is the result of the failure of such employee to accept such treatment, services, and supplies, provided that an employer may at any time permit an employee to have treatment for his disease or injury by spiritual means or prayer in lieu of such physician, services, and supplies.

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

(d) If an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital, or nurse's services and supplies or such treatment by spiritual means or prayer as specified in this section, or for other good reason, a physician other than that provided by the employer treats the diseased employee within the period of disability, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within said period, the reasonable cost of such services and supplies shall, subject to approval of the worker's compensation board, be paid by the employer.

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

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

(f) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this

C
O
P
Y

chapter is solely with the board. **Subject to the exception in IC 27-8-5-15**, all claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under this chapter."

Page 9, line 37, after "policies" insert "**or plans of self-insurance**".

Page 9, line 38, after "policy" insert "**or plan of self-insurance**".

Page 10, line 4, after "exhausted," insert "**or has not been elected under IC 22-3-6-1 or IC 22-3-7-9**".

Page 10, line 4, after "policy" insert "**or plan of self-insurance**".

Page 15, line 7, after "policy" insert "**or plan of self-insurance**".

Page 15, line 11, after "." insert "**The policy or plan of self-insurance may not contain a provision that excludes coverage for injuries incurred in the course of activities for wage or employment, except to the extent that the injuries are covered by IC 22-3.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1928 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 7, nays 3.

C
O
P
Y

