

HOUSE BILL No. 1537

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3-4-13; IC 22-3-7-27; IC 22-3-7-36.

Synopsis: Worker's compensation. Requires self-insured employers, insurance carriers, and third party administrators to report an injury to an employee to the worker's compensation board of Indiana by electronic data interchange by December 31, 1999, or with an approved implementation plan providing for the ability to report by electronic data interchange not later than June 30, 2000. Provides that an appeal of compensation due, continuance of payments, or the period for which compensation should be paid must be made to the worker's compensation board of Indiana within 30 days of the date of the award. Provides that applications to the worker's compensation board of Indiana for increased partial impairment are barred unless filed within one year from the last day for which compensation was paid. Provides
(Continued next page)

Effective: July 1, 1999.

Liggett

January 19, 1999, read first time and referred to Committee on Labor and Employment.

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Digest Continued

that an employer that does not join an employee injured in the course of employment by another person in a suit for damages from another person shall pay its pro rata share of costs, reasonable expenses, and attorney's fee of 25% if collected without a suit. Provides that an employer that does not join an employee injured in the course of employment by another person in a suit for damages from another person shall pay its pro rata share of costs, reasonable expenses, and an attorney's fee of 33 1/3% if collected by a suit.

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Introduced

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.

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HOUSE BILL No. 1537

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 22-3-4-13 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Every employer
3 shall keep a record of all injuries, fatal or otherwise, received by or
4 claimed to have been received by his employees in the course of their
5 employment. Within seven (7) days after the occurrence and
6 knowledge thereof, as provided in IC 22-3-3-1, of any injury to an
7 employee causing his death or his absence from work for more than
8 one (1) day, a report thereof shall be made in writing and mailed to the
9 employer's insurance carrier or, if the employer is self insured,
10 **delivered** to the worker's compensation board ~~on blanks to be procured~~
11 ~~from the board for that purpose in the manner provided in~~
12 **subsections (b) and (c)**. The insurance carrier shall ~~mail~~ **deliver** the
13 report to the worker's compensation board **in the manner provided in**
14 **subsections (b) and (c)** not later than seven (7) days after receipt of the
15 report or fourteen (14) days after the employer's knowledge of the



1 injury, whichever is later. An employer or insurance carrier that fails
 2 to comply with this subsection is subject to a civil penalty of fifty
 3 dollars (\$50), to be assessed and collected by the board. Civil penalties
 4 collected under this section shall be deposited in the state general fund.

5 **(b) All insurance carriers, companies who carry risk without**
 6 **insurance, and third party administrators reporting accident**
 7 **information to the board in compliance with subsection (a) shall:**

8 **(1) report the information using electronic data interchange**
 9 **standards prescribed by the board no later than December 31,**
 10 **1999; or**

11 **(2) in the alternative, the reporting entity shall have an**
 12 **implementation plan approved by the board no later than**
 13 **December 31, 1999, that provides for the ability to report the**
 14 **information using electronic data interchange standards**
 15 **prescribed by the board no later than June 30, 2000.**

16 **Prior to the December 31, 1999, and June 30, 2000, deadlines, the**
 17 **reporting entity may continue to report accidents to the board by**
 18 **mail in compliance with subsection (a).**

19 **(c)** The report shall contain the name, nature, and location of the
 20 business of the employer, the name, age, sex, wages, occupation of the
 21 injured employee, the date and hour of the accident causing the alleged
 22 injury, the nature and cause of the injury, and such other information
 23 as may be required by the board.

24 ~~(c)~~ **(d)** A person who violates any provision of this article, except
 25 IC 22-3-5-1 or IC 22-3-7-34(a) or IC 22-3-7-34(b), commits a Class C
 26 infraction. A person who violates IC 22-3-5-1 or IC 22-3-7-34(a) or
 27 IC 22-3-7-34(b) commits a Class A infraction. The worker's
 28 compensation board in the name of the state may seek relief from any
 29 court of competent jurisdiction to enjoin any violation of this article.

30 ~~(d)~~ **(e)** The venue of all criminal actions under this section lies in the
 31 county in which the employee was injured. The prosecuting attorney of
 32 the county shall prosecute all such violations upon written request of
 33 the worker's compensation board. Such violations shall be prosecuted
 34 in the name of the state.

35 ~~(e)~~ **(f)** In an action before the board against an employer who at the
 36 time of the injury to or occupational disease of an employee had failed
 37 to comply with IC 22-3-5-1 or IC 22-3-7-34(a) or IC 22-3-7-34(b), the
 38 board may award to the employee or the dependents of a deceased
 39 employee:

40 (1) compensation not to exceed double the compensation
 41 provided by this article;

42 (2) medical expenses; and



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1 (3) reasonable attorney fees in addition to the compensation and
2 medical expenses.

3 ~~(f)~~ (g) In an action under subsection (c) the court may:

4 (1) order the employer to cease doing business in Indiana until the
5 employer furnishes proof of insurance as required by IC 22-3-5-1
6 and IC 22-3-7-34(a) or IC 22-3-7-34(b);

7 (2) require satisfactory proof of the employer's financial ability to
8 pay any compensation or medical expenses in the amount and
9 manner and when due as provided for in IC 22-3, for any injuries
10 which occurred during any period of noncompliance; and

11 (3) require the employer to deposit with the worker's
12 compensation board an acceptable security, indemnity, or bond to
13 secure the payment of such compensation and medical expense
14 liabilities.

15 ~~(g)~~ (h) The penalty provisions of subsection (e) shall apply only to
16 the employer and shall not apply for a failure to exact a certificate of
17 insurance under IC 22-3-2-14 or IC 22-3-7-34(i) or IC 22-3-7-34(j).

18 SECTION 2. IC 22-3-7-27 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 27. (a) If the employer
20 and the employee or the employee's dependents disagree in regard to
21 the compensation payable under this chapter, or, if they have reached
22 such an agreement, which has been signed by them, filed with and
23 approved by the worker's compensation board, and afterward disagree
24 as to the continuance of payments under such agreement, or as to the
25 period for which payments shall be made, or as to the amount to be
26 paid, because of a change in conditions since the making of such
27 agreement, either party may then make an application to the board for
28 the determination of the matters in dispute. When compensation which
29 is payable in accordance with an award or by agreement approved by
30 the board is ordered paid in a lump sum by the board, no review shall
31 be had as in this subsection mentioned.

32 (b) The application making claim for compensation filed with the
33 worker's compensation board shall state the following:

34 (1) The approximate date of the last day of the last exposure and
35 the approximate date of the disablement.

36 (2) The general nature and character of the illness or disease
37 claimed.

38 (3) The name and address of the employer by whom employed on
39 the last day of the last exposure, and if employed by any other
40 employer after such last exposure and before disablement, the
41 name and address of such other employer or employers.

42 (4) In case of death, the date and place of death.



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1 (5) Amendments to applications making claim for compensation
 2 which relate to the same disablement or disablement resulting in
 3 death originally claimed upon may be allowed by the board in its
 4 discretion, and, in the exercise of such discretion, it may, in
 5 proper cases, order a trial de novo. Such amendment shall relate
 6 back to the date of the filing of the original application so
 7 amended.

8 (c) Upon the filing of such application, the board shall set the date
 9 of hearing, which shall be as early as practicable, and shall notify the
 10 parties, in the manner prescribed by the board, of the time and place of
 11 hearing. The hearing of all claims for compensation on account of
 12 occupational disease shall be held in the county in which the last
 13 exposure occurred or in any adjoining county, except when the parties
 14 consent to a hearing elsewhere. Claims assigned to an individual board
 15 member that are considered to be of an emergency nature by that board
 16 member, may be heard in any county within the board member's
 17 jurisdiction.

18 (d) The board by any or all of its members shall hear the parties at
 19 issue, their representatives, and witnesses, and shall determine the
 20 dispute in a summary manner. The award shall be filed with the record
 21 of proceedings, and a copy thereof shall immediately be sent by
 22 registered mail to each of the parties in dispute.

23 (e) If an application for review is made to the board within ~~twenty~~
 24 ~~(20) days after receiving a copy of an~~ **thirty (30) days from the date**
 25 **of the award** made by less than all the members, the full board, if the
 26 first hearing was not held before the full board, shall review the
 27 evidence, or, if deemed advisable, hear the parties at issue, their
 28 representatives, and witnesses as soon as practicable, and shall make
 29 an award and file the same with the finding of the facts on which it is
 30 based and send a copy thereof to each of the parties in dispute, in like
 31 manner as specified in subsection (d).

32 (f) An award of the board by less than all of the members as
 33 provided in this section, if not reviewed as provided in this section,
 34 shall be final and conclusive. An award by the full board shall be
 35 conclusive and binding unless either party to the dispute, within thirty
 36 (30) days after receiving a copy of such award, appeals to the court of
 37 appeals under the same terms and conditions as govern appeals in
 38 ordinary civil actions. The court of appeals shall have jurisdiction to
 39 review all questions of law and of fact. The board, of its own motion,
 40 may certify questions of law to the court of appeals for its decision and
 41 determination. An assignment of errors that the award of the full board
 42 is contrary to law shall be sufficient to present both the sufficiency of



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1 the facts found to sustain the award and the sufficiency of the evidence
2 to sustain the finding of facts. All such appeals and certified questions
3 of law shall be submitted upon the date filed in the court of appeals,
4 shall be advanced upon the docket of the court, and shall be determined
5 at the earliest practicable date, without any extensions of time for filing
6 briefs. An award of the full board affirmed on appeal, by the employer,
7 shall be increased thereby five percent (5%), and by order of the court
8 may be increased ten percent (10%).

9 (g) Upon order of the worker's compensation board made after five
10 (5) days notice is given to the opposite party, any party in interest may
11 file in the circuit or superior court of the county in which the
12 disablement occurred a certified copy of the memorandum of
13 agreement, approved by the board, or of an order or decision of the
14 board, or of an award of the full board unappealed from, or of an award
15 of the full board affirmed upon an appeal, whereupon the court shall
16 render judgment in accordance therewith and notify the parties. Such
17 judgment shall have the same effect and all proceedings in relation
18 thereto shall thereafter be the same as though such judgment has been
19 rendered in a suit duly heard and determined by the court. Any such
20 judgment of such circuit or superior court, unappealed from or affirmed
21 on appeal or modified in obedience to the mandate of the court of
22 appeals, shall be modified to conform to any decision of the industrial
23 board ending, diminishing, or increasing any weekly payment under the
24 provisions of subsection (i) upon the presentation to it of a certified
25 copy of such decision.

26 (h) In all proceedings before the worker's compensation board or in
27 a court under the compensation provisions of this chapter, the costs
28 shall be awarded and taxed as provided by law in ordinary civil actions
29 in the circuit court.

30 (i) The power and jurisdiction of the worker's compensation board
31 over each case shall be continuing, and, from time to time, it may, upon
32 its own motion or upon the application of either party on account of a
33 change in conditions, make such modification or change in the award
34 ending, lessening, continuing, or extending the payments previously
35 awarded, either by agreement or upon hearing, as it may deem just,
36 subject to the maximum and minimum provided for in this chapter.
37 When compensation which is payable in accordance with an award or
38 settlement contract approved by the board is ordered paid in a lump
39 sum by the board, no review shall be had as in this subsection
40 mentioned. Upon making any such change, the board shall immediately
41 send to each of the parties a copy of the modified award. No such
42 modification shall affect the previous award as to any money paid

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1 thereunder. The board shall not make any such modification upon its
2 own motion, nor shall any application therefor be filed by either party
3 after the expiration of two (2) years from the last day for which
4 compensation was paid under the original award made either by
5 agreement or upon hearing, except that applications for increased
6 permanent partial impairment are barred unless filed within one (1)
7 year from the **first last** day for which compensation was paid. The
8 board may at any time correct any clerical error in any finding or
9 award.

10 (j) The board or any member thereof may, upon the application of
11 either party or upon its own motion, appoint a disinterested and duly
12 qualified physician or surgeon to make any necessary medical
13 examination of the employee and to testify in respect thereto. Such
14 physician or surgeon shall be allowed traveling expenses and a
15 reasonable fee, to be fixed by the board. The fees and expenses of such
16 physician or surgeon shall be paid by the state only on special order of
17 the board or a member thereof.

18 (k) The board or any member thereof may, upon the application of
19 either party or upon its own motion, appoint a disinterested and duly
20 qualified industrial hygienist, industrial engineer, industrial physician,
21 or chemist to make any necessary investigation of the occupation in
22 which the employee alleges that he was last exposed to the hazards of
23 the occupational disease claimed upon, and testify with respect to the
24 occupational disease health hazards found by such person or persons
25 to exist in such occupation. Such person or persons shall be allowed
26 traveling expenses and a reasonable fee, to be fixed by the board. The
27 fees and expenses of such persons shall be paid by the state, only on
28 special order of the board or a member thereof.

29 (l) Whenever any claimant misconceives the claimant's remedy and
30 files an application for adjustment of a claim under IC 22-3-2 through
31 IC 22-3-6 and it is subsequently discovered, at any time before the final
32 disposition of such cause, that the claim for injury or death which was
33 the basis for such application should properly have been made under
34 the provisions of this chapter, then the application so filed under
35 IC 22-3-2 through IC 22-3-6 may be amended in form or substance or
36 both to assert a claim for such disability or death under the provisions
37 of this chapter, and it shall be deemed to have been so filed as amended
38 on the date of the original filing thereof, and such compensation may
39 be awarded as is warranted by the whole evidence pursuant to the
40 provisions of this chapter. When such amendment is submitted, further
41 or additional evidence may be heard by the worker's compensation
42 board when deemed necessary. Nothing in this section contained shall

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1 be construed to be or permit a waiver of any of the provisions of this
 2 chapter with reference to notice or time for filing a claim, but notice of
 3 filing of a claim, if given or done, shall be deemed to be a notice or
 4 filing of a claim under the provisions of this chapter if given or done
 5 within the time required in this chapter.

6 SECTION 3. IC 22-3-7-36 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 36. (a) Whenever
 8 disablement or death from an occupational disease arising out of and
 9 in the course of the employment for which compensation is payable
 10 under this chapter, shall have been sustained under circumstances
 11 creating in some other person than the employer and not in the same
 12 employ a legal liability to pay damages in respect thereto, the injured
 13 employee, or the employee's dependents, in case of death, may
 14 commence legal proceedings against such other person to recover
 15 damages notwithstanding such employer's or such employer's
 16 occupational disease insurance carrier's payment of, or liability to pay,
 17 compensation under this chapter. In such case, however, if the action
 18 against such other person is brought by the injured employee or the
 19 employee's dependents and judgment is obtained and paid and accepted
 20 and settlement is made with such other person, either with or without
 21 suit, then from the amount received by such employee or dependents
 22 there shall be paid to the employer, or such employer's occupational
 23 disease insurance carrier, the amount of compensation paid to such
 24 employee or dependents, plus the medical, hospital and nurses' services
 25 and supplies and burial expense paid by the employer or such
 26 employer's occupational disease insurance carrier, and the liability of
 27 the employer or such employer's occupational disease insurance carrier
 28 to pay further compensation or other expenses shall thereupon
 29 terminate, whether or not one (1) or all of the dependents are entitled
 30 to share in the proceeds of the settlement or recovery and whether or
 31 not one (1) or all of the dependents could have maintained the action
 32 or claim for wrongful death.

33 (b) In the event such employee or the employee's dependents, not
 34 having received compensation or medical, surgical, hospital, or nurse's
 35 services and supplies or death benefits, or such employer's occupational
 36 disease insurance carrier, shall procure a judgment against such other
 37 party for disablement or death from an occupational disease arising out
 38 of and in the course of the employment, which judgment is paid, or if
 39 settlement is made with such other person, either with or without suit,
 40 then the employer or such employer's occupational disease insurance
 41 carrier shall have no liability for payment of compensation or for
 42 payment of medical, surgical, hospital, or nurse's services and supplies



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1 or death benefits whatsoever, whether or not one (1) or all of the
2 dependents are entitled to share in the proceeds of settlement or
3 recovery and whether or not one (1) or all of the dependents could have
4 maintained the action or claim for wrongful death.

5 (c) In the event an employee, or in the event of the employee's death,
6 the employee's dependents, shall procure a final judgment against such
7 other person other than by agreement, for disablement or death from an
8 occupational disease arising out of and in the course of the employment
9 and such judgment is for a lesser sum than the amount for which the
10 employer or such employer's occupational disease insurance carrier is
11 liable for compensation and for medical, surgical, hospital, and nurse's
12 services and supplies, as of the date the judgment becomes final, then
13 the employee, or in the event of the employee's death, the employee's
14 dependents, shall have the option of either collecting such judgment
15 and repaying the employer or such employer's occupational disease
16 insurance carrier for compensation previously drawn, if any, and
17 repaying the employer or such employer's occupational disease
18 insurance carrier for medical, surgical, hospital, and nurse's services
19 and supplies previously paid, if any, and of repaying the employer or
20 such employer's occupational disease insurance carrier, the burial
21 benefits paid, if any, or of assigning all rights under said judgment to
22 the employer or such employer's occupational disease insurance carrier
23 and thereafter receiving all compensation and medical, surgical,
24 hospital, and nurse's services and supplies to which the employee, or
25 in the event of the employee's death, to which the employee's
26 dependents would be entitled if there had been no action brought
27 against such other party.

28 (d) If the employee or the employee's dependents agree to receive
29 compensation, because of an occupational disease arising out of and in
30 the course of the employment, from the employer or such employer's
31 occupational disease insurance carrier, or to accept from the employer
32 or such employer's occupational disease insurance carrier by loan or
33 otherwise, any payment on account of such compensation or institute
34 proceedings to recover the same, the said employer or such employer's
35 occupational disease insurance carrier shall have a lien upon any
36 settlement award, judgment, or fund out of which such employee might
37 be compensated from the third party.

38 (e) The employee, or in the event of the employee's death, the
39 employee's dependents, shall institute legal proceedings against such
40 other person for damages within two (2) years after said cause of action
41 accrues. If, after said proceeding is commenced, the same is dismissed,
42 the employer or such employer's occupational disease insurance carrier,

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1 having paid compensation or having become liable therefor, may
2 collect in their own name or in the name of the disabled employee, or
3 in the case of death, in the name of the employee's dependents, from
4 the other person in whom legal liability for damages exists, the
5 compensation paid or payable to the disabled employee or the
6 employee's dependents, plus such medical, surgical, hospital, and
7 nurse's services and supplies and burial expense paid by the employer
8 or such employer's occupational disease insurance carrier for which
9 they have become liable. The employer or such employer's
10 occupational disease insurance carrier may commence such action at
11 law for such collection against the other person in whom legal liability
12 for damages exists, not later than one (1) year from the date said action
13 so commenced, has been dismissed, notwithstanding the provisions of
14 any statute of limitations to the contrary.

15 (f) If said employee, or in the event of the employee's death, the
16 employee's dependents, shall fail to institute legal proceedings, against
17 such other person for damages within two (2) years after said cause of
18 action accrues, the employer or such employer's occupational disease
19 insurance carrier, having paid compensation or having been liable
20 therefor, may collect in their own name or in the name of the disabled
21 employee, or in the case of the employee's death, in the name of the
22 employee's dependents, from the other person in whom legal liability
23 for damage exists, the compensation paid or payable to the disabled
24 employee or to the employee's dependents, plus the medical, surgical,
25 hospital, and nurse's services and supplies and burial expenses, paid by
26 them or for which they have become liable, and the employer or such
27 employer's occupational disease insurance carrier may commence such
28 action at law for such collection against such other person in whom
29 legal liability exists at any time within one (1) year from the date of the
30 expiration of the two (2) years when said action accrued to said
31 disabled employee or, in the event of the employee's death, to the
32 employee's dependents, notwithstanding the provisions of any statute
33 of limitations to the contrary.

34 (g) In such actions brought as provided in this section by the
35 employee or the employee's dependents, the employee or the
36 employee's dependents shall, within thirty (30) days after such action
37 is filed, notify the employer or such employer's occupational disease
38 insurance carrier, by personal service or registered or certified mail, of
39 such fact and the name of the court in which suit is brought, filing
40 proof thereof in such action.

41 (h) If the employer does not join in the action within ninety (90)
42 days after receipt of the notice, then out of any actual money

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1 reimbursement received by the employer or such employer's
2 occupational disease insurance carrier pursuant to this section, they
3 shall pay their pro rata share of all costs and reasonably necessary
4 expenses in connection with such third party claim, action, or suit, and
5 to the attorney at law selected by the employee or the employee's
6 dependents, a fee of twenty-five percent (25%), if collected without
7 ~~trial suit~~, of the amount of benefits after the expenses and costs in
8 connection with such third party claim have been deducted therefrom,
9 and a fee of thirty-three and one-third percent (33 1/3%), if collected
10 ~~after trial~~ **with suit**, of the amount of such benefits after deduction of
11 the costs and reasonably necessary expenses in connection with such
12 third party claim, action, or suit. The employer may, within ninety (90)
13 days after receipt of notice of suit from the employee or the employee's
14 dependents, join in the action upon the employee's motion so that all
15 orders of court after hearing and judgment shall be made for the
16 employee's protection.

17 (i) No release or settlement of claim for damages by reason of such
18 injury or death, and no satisfaction of judgment in such proceedings
19 shall be valid without the written consent of both employer or such
20 employer's occupational disease insurance carrier, and employee, or the
21 employee's dependents. However, in the case of the employer or such
22 employer's occupational disease insurance carrier, such consent shall
23 not be required where the employer, or such employer's occupational
24 disease insurance carrier has been fully indemnified or protected by
25 court order.

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