

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 2085 be amended to read as follows:

- 1 Page 1, line 4, after "under" insert "**medical provisions of**".
- 2 Page 1, line 4, delete "for medical, surgical,".
- 3 Page 1, line 5, "hospital and nurses' services and supplies".
- 4 Page 1, line 11, delete "." and insert "**arising out of and in the**
- 5 **course of employment.**".
- 6 Page 6, between lines 33 and 34, begin a new paragraph and insert:
- 7 "SECTION 3. IC 22-3-7-6.3 IS ADDED TO THE INDIANA CODE
- 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 9 1, 1999]: **Sec. 6.3. Except for remedies available under IC 5-2-6.1,**
- 10 **recovery under the medical provisions of this chapter is the**
- 11 **exclusive right and remedy for:**
- 12 (1) **an employee described in section 9(b)(7) of this chapter;**
- 13 **and**
- 14 (2) **the personal representatives, dependents, or next of kin, at**
- 15 **common law or otherwise, of an employee described in section**
- 16 **9(b)(7) of this chapter;**
- 17 **on account of disablement or death by occupational disease arising**
- 18 **out of and in the course of employment.**
- 19 SECTION 4. IC 22-3-7-9 IS AMENDED TO READ AS FOLLOWS
- 20 [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) As used in this chapter,
- 21 "employer" includes the state and any political subdivision, any
- 22 municipal corporation within the state, any individual or the legal
- 23 representative of a deceased individual, firm, association, limited
- 24 liability company, or corporation or the receiver or trustee of the same,
- 25 using the services of another for pay. **The term also includes an**
- 26 **employer that provides on-the-job training under the federal**
- 27 **School to Work Opportunities Act (20 U.S.C. 6101 et seq.).** If the
- 28 employer is insured, the term includes his insurer so far as applicable.
- 29 However, the inclusion of an employer's insurer within this definition
- 30 does not allow an employer's insurer to avoid payment for services
- 31 rendered to an employee with the approval of the employer.
- 32 (b) As used in this chapter, "employee" means every person,
- 33 including a minor, in the service of another, under any contract of hire

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

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

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

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

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

31 (A) they are licensed real estate agents;

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

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

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

41 (6) An owner-operator that provides a motor vehicle and the  
 42 services of a driver under a written contract that is subject to  
 43 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor  
 44 carrier is not an employee of the motor carrier for purposes of this  
 45 chapter. The owner-operator may elect to be covered and have the  
 46 owner-operator's drivers covered under a worker's compensation  
 47 insurance policy or authorized self-insurance that insures the

1 motor carrier if the owner-operator pays the premiums as  
 2 requested by the motor carrier. An election by an owner-operator  
 3 under this subdivision does not terminate the independent  
 4 contractor status of the owner-operator for any purpose other than  
 5 the purpose of this subdivision.

6 **(7) An unpaid participant under the federal School to Work**  
 7 **Opportunities Act (20 U.S.C. 6101 et seq.) is an employee.**

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

29 (d) This chapter does not apply to casual laborers as defined in  
 30 subsection (b), nor to farm or agricultural employees, nor to household  
 31 employees, nor to railroad employees engaged in train service as  
 32 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or  
 33 foremen in charge of yard engines and helpers assigned thereto, nor to  
 34 their employers with respect to these employees. Also, this chapter  
 35 does not apply to employees or their employers with respect to  
 36 employments in which the laws of the United States provide for  
 37 compensation or liability for injury to the health, disability, or death by  
 38 reason of diseases suffered by these employees.

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

45 (f) For the purposes of this chapter, no compensation shall be  
 46 payable for or on account of any occupational diseases unless  
 47 disablement, as defined in subsection (e), occurs within two (2) years

1 after the last day of the last exposure to the hazards of the disease  
2 except for the following:

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

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

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

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

26 (5) In all cases of occupational disease caused by the inhalation  
27 of asbestos dust in which the last date of the last exposure occurs  
28 on or after July 1, 1988, no compensation shall be payable unless  
29 disablement (as defined in subsection (e)) occurs within  
30 thirty-five (35) years after the last day of the last exposure.

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

36 (1) where death occurs during the pendency of a claim filed by an  
37 employee within two (2) years after the date of disablement and  
38 which claim has not resulted in a decision or has resulted in a  
39 decision which is in process of review or appeal; or

40 (2) where, by agreement filed or decision rendered, a  
41 compensable period of disability has been fixed and death occurs  
42 within two (2) years after the end of such fixed period, but in no  
43 event later than three hundred (300) weeks after the date of  
44 disablement.

45 (h) As used in this chapter, "billing review service" refers to a  
46 person or an entity that reviews a medical service provider's bills or  
47 statements for the purpose of determining pecuniary liability. The term

1 includes an employer's worker's compensation insurance carrier if the  
2 insurance carrier performs such a review.

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

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

8 (1) The geographic service area served by zip codes with the first  
9 three (3) digits 463 and 464.

10 (2) The geographic service area served by zip codes with the first  
11 three (3) digits 465 and 466.

12 (3) The geographic service area served by zip codes with the first  
13 three (3) digits 467 and 468.

14 (4) The geographic service area served by zip codes with the first  
15 three (3) digits 469 and 479.

16 (5) The geographic service area served by zip codes with the first  
17 three (3) digits 460, 461 (except 46107), and 473.

18 (6) The geographic service area served by the 46107 zip code and  
19 zip codes with the first three (3) digits 462.

20 (7) The geographic service area served by zip codes with the first  
21 three (3) digits 470, 471, 472, 474, and 478.

22 (8) The geographic service area served by zip codes with the first  
23 three (3) digits 475, 476, and 477.

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

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

34 Renumber all SECTIONS consecutively.

(Reference is to EHB 2085 as printed April 6, 1999.)

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Senator KENLEY