

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 486 be amended to read as follows:

1 Page 14, between lines 19 and 20, begin a new paragraph and insert:
2 "SECTION 6. IC 22-3-6-1, AS AMENDED BY P.L.1-2006,
3 SECTION 339, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE UPON PASSAGE]: Sec. 1. In IC 22-3-2 through
5 IC 22-3-6, 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. A parent corporation and its
11 subsidiaries shall each be considered joint employers of the
12 corporation's, the parent's, or the subsidiaries' employees for purposes
13 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of
14 employees shall each be considered joint employers of the employees
15 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and
16 IC 22-3-3-31. If the employer is insured, the term includes the
17 employer's insurer so far as applicable. However, the inclusion of an
18 employer's insurer within this definition does not allow an employer's
19 insurer to avoid payment for services rendered to an employee with the
20 approval of the employer. The term also includes an employer that
21 provides on-the-job training under the federal School to Work
22 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in
23 IC 22-3-2-2.5. The term does not include a nonprofit corporation that
24 is recognized as tax exempt under Section 501(c)(3) of the Internal

1 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the
2 corporation enters into an independent contractor agreement with a
3 person for the performance of youth coaching services on a part-time
4 basis.

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

10 (1) An executive officer elected or appointed and empowered in
11 accordance with the charter and bylaws of a corporation, other
12 than a municipal corporation or governmental subdivision or a
13 charitable, religious, educational, or other nonprofit corporation,
14 is an employee of the corporation under IC 22-3-2 through
15 IC 22-3-6. **However, an officer of a corporation who is the sole**
16 **officer of the corporation is not an employee of the**
17 **corporation under IC 22-3-2 through IC 22-3-6. An officer of**
18 **a corporation who is the sole officer of the corporation may**
19 **elect to be an employee of the corporation under IC 22-3-2**
20 **through IC 22-3-6. If an officer makes this election, the officer**
21 **must serve written notice of the election on the corporation's**
22 **insurance carrier and the board. An officer of a corporation**
23 **who is the sole officer of the corporation may not be**
24 **considered an employee under IC 22-3-2 through IC 22-3-6**
25 **until the notice is received by the insurance carrier and the**
26 **board.**

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

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

42 (4) An owner of a sole proprietorship may elect to include the
43 owner as an employee under IC 22-3-2 through IC 22-3-6 if the
44 owner is actually engaged in the proprietorship business. If the
45 owner makes this election, the owner must serve upon the owner's
46 insurance carrier and upon the board written notice of the

- 1 election. No owner of a sole proprietorship may be considered an
2 employee under IC 22-3-2 through IC 22-3-6 until the notice has
3 been received. If the owner of a sole proprietorship is an
4 independent contractor in the construction trades and does not
5 make the election provided under this subdivision, the owner
6 must obtain an affidavit of exemption under IC 22-3-2-14.5.
- 7 (5) A partner in a partnership may elect to include the partner as
8 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
9 actually engaged in the partnership business. If a partner makes
10 this election, the partner must serve upon the partner's insurance
11 carrier and upon the board written notice of the election. No
12 partner may be considered an employee under IC 22-3-2 through
13 IC 22-3-6 until the notice has been received. If a partner in a
14 partnership is an independent contractor in the construction trades
15 and does not make the election provided under this subdivision,
16 the partner must obtain an affidavit of exemption under
17 IC 22-3-2-14.5.
- 18 (6) Real estate professionals are not employees under IC 22-3-2
19 through IC 22-3-6 if:
- 20 (A) they are licensed real estate agents;
 - 21 (B) substantially all their remuneration is directly related to
22 sales volume and not the number of hours worked; and
 - 23 (C) they have written agreements with real estate brokers
24 stating that they are not to be treated as employees for tax
25 purposes.
- 26 (7) A person is an independent contractor in the construction
27 trades and not an employee under IC 22-3-2 through IC 22-3-6 if
28 the person is an independent contractor under the guidelines of
29 the United States Internal Revenue Service.
- 30 (8) An owner-operator that provides a motor vehicle and the
31 services of a driver under a written contract that is subject to
32 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier
33 is not an employee of the motor carrier for purposes of IC 22-3-2
34 through IC 22-3-6. The owner-operator may elect to be covered
35 and have the owner-operator's drivers covered under a worker's
36 compensation insurance policy or authorized self-insurance that
37 insures the motor carrier if the owner-operator pays the premiums
38 as requested by the motor carrier. An election by an
39 owner-operator under this subdivision does not terminate the
40 independent contractor status of the owner-operator for any
41 purpose other than the purpose of this subdivision.
- 42 (9) A member or manager in a limited liability company may elect
43 to include the member or manager as an employee under
44 IC 22-3-2 through IC 22-3-6 if the member or manager is actually
45 engaged in the limited liability company business. If a member or
46 manager makes this election, the member or manager must serve

1 upon the member's or manager's insurance carrier and upon the
2 board written notice of the election. A member or manager may
3 not be considered an employee under IC 22-3-2 through IC 22-3-6
4 until the notice has been received.

5 (10) An unpaid participant under the federal School to Work
6 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
7 extent set forth in IC 22-3-2-2.5.

8 (11) A person who enters into an independent contractor
9 agreement with a nonprofit corporation that is recognized as tax
10 exempt under Section 501(c)(3) of the Internal Revenue Code (as
11 defined in IC 6-3-1-11(a)) to perform youth coaching services on
12 a part-time basis is not an employee for purposes of IC 22-3-2
13 through IC 22-3-6.

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

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

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

33 (3) A minor employee who, at the time of the accident, is a
34 student performing services for an employer as part of an
35 approved program under IC 20-37-2-7 shall be considered a
36 full-time employee for the purpose of computing compensation
37 for permanent impairment under IC 22-3-3-10. The average
38 weekly wages for such a student shall be calculated as provided
39 in subsection (d)(4).

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

- 1 (17) years of age.
- 2 (d) "Average weekly wages" means the earnings of the injured
3 employee in the employment in which the employee was working at the
4 time of the injury during the period of fifty-two (52) weeks
5 immediately preceding the date of injury, divided by fifty-two (52),
6 except as follows:
- 7 (1) If the injured employee lost seven (7) or more calendar days
8 during this period, although not in the same week, then the
9 earnings for the remainder of the fifty-two (52) weeks shall be
10 divided by the number of weeks and parts thereof remaining after
11 the time lost has been deducted.
- 12 (2) Where the employment prior to the injury extended over a
13 period of less than fifty-two (52) weeks, the method of dividing
14 the earnings during that period by the number of weeks and parts
15 thereof during which the employee earned wages shall be
16 followed, if results just and fair to both parties will be obtained.
17 Where by reason of the shortness of the time during which the
18 employee has been in the employment of the employee's employer
19 or of the casual nature or terms of the employment it is
20 impracticable to compute the average weekly wages, as defined
21 in this subsection, regard shall be had to the average weekly
22 amount which during the fifty-two (52) weeks previous to the
23 injury was being earned by a person in the same grade employed
24 at the same work by the same employer or, if there is no person so
25 employed, by a person in the same grade employed in the same
26 class of employment in the same district.
- 27 (3) Wherever allowances of any character made to an employee
28 in lieu of wages are a specified part of the wage contract, they
29 shall be deemed a part of the employee's earnings.
- 30 (4) In computing the average weekly wages to be used in
31 calculating an award for permanent impairment under
32 IC 22-3-3-10 for a student employee in an approved training
33 program under IC 20-37-2-7, the following formula shall be used.
34 Calculate the product of:
- 35 (A) the student employee's hourly wage rate; multiplied by
36 (B) forty (40) hours.
- 37 The result obtained is the amount of the average weekly wages for
38 the student employee.
- 39 (e) "Injury" and "personal injury" mean only injury by accident
40 arising out of and in the course of the employment and do not include
41 a disease in any form except as it results from the injury.
- 42 (f) "Billing review service" refers to a person or an entity that
43 reviews a medical service provider's bills or statements for the purpose
44 of determining pecuniary liability. The term includes an employer's
45 worker's compensation insurance carrier if the insurance carrier
46 performs such a review.

1 (g) "Billing review standard" means the data used by a billing
2 review service to determine pecuniary liability.

3 (h) "Community" means a geographic service area based on ZIP
4 code districts defined by the United States Postal Service according to
5 the following groupings:

6 (1) The geographic service area served by ZIP codes with the first
7 three (3) digits 463 and 464.

8 (2) The geographic service area served by ZIP codes with the first
9 three (3) digits 465 and 466.

10 (3) The geographic service area served by ZIP codes with the first
11 three (3) digits 467 and 468.

12 (4) The geographic service area served by ZIP codes with the first
13 three (3) digits 469 and 479.

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

16 (6) The geographic service area served by the 46107 ZIP code and
17 ZIP codes with the first three (3) digits 462.

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

20 (8) The geographic service area served by ZIP codes with the first
21 three (3) digits 475, 476, and 477.

22 (i) "Medical service provider" refers to a person or an entity that
23 provides medical services, treatment, or supplies to an employee under
24 IC 22-3-2 through IC 22-3-6.

25 (j) "Pecuniary liability" means the responsibility of an employer or
26 the employer's insurance carrier for the payment of the charges for each
27 specific service or product for human medical treatment provided
28 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
29 less than the charges made by medical service providers at the eightieth
30 percentile in the same community for like services or products.

31 SECTION 7. IC 22-3-7-9, AS AMENDED BY P.L.201-2005,
32 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 UPON PASSAGE]: Sec. 9. (a) As used in this chapter, "employer"
34 includes the state and any political subdivision, any municipal
35 corporation within the state, any individual or the legal representative
36 of a deceased individual, firm, association, limited liability company,
37 or corporation or the receiver or trustee of the same, using the services
38 of another for pay. A parent corporation and its subsidiaries shall each
39 be considered joint employers of the corporation's, the parent's, or the
40 subsidiaries' employees for purposes of sections 6 and 33 of this
41 chapter. Both a lessor and a lessee of employees shall each be
42 considered joint employers of the employees provided by the lessor to
43 the lessee for purposes of sections 6 and 33 of this chapter. The term
44 also includes an employer that provides on-the-job training under the
45 federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to
46 the extent set forth under section 2.5 of this chapter. If the employer is

1 insured, the term includes the employer's insurer so far as applicable.
2 However, the inclusion of an employer's insurer within this definition
3 does not allow an employer's insurer to avoid payment for services
4 rendered to an employee with the approval of the employer. The term
5 does not include a nonprofit corporation that is recognized as tax
6 exempt under Section 501(c)(3) of the Internal Revenue Code (as
7 defined in IC 6-3-1-11(a)) to the extent the corporation enters into an
8 independent contractor agreement with a person for the performance
9 of youth coaching services on a part-time basis.

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

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

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

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

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

43 (A) they are licensed real estate agents;

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

46 (C) they have written agreements with real estate brokers

1 stating that they are not to be treated as employees for tax
2 purposes.

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

7 (6) An owner-operator that provides a motor vehicle and the
8 services of a driver under a written contract that is subject to
9 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR ~~1057~~, **376**, to a motor
10 carrier is not an employee of the motor carrier for purposes of this
11 chapter. The owner-operator may elect to be covered and have the
12 owner-operator's drivers covered under a worker's compensation
13 insurance policy or authorized self-insurance that insures the
14 motor carrier if the owner-operator pays the premiums as
15 requested by the motor carrier. An election by an owner-operator
16 under this subdivision does not terminate the independent
17 contractor status of the owner-operator for any purpose other than
18 the purpose of this subdivision.

19 (7) An unpaid participant under the federal School to Work
20 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
21 extent set forth under section 2.5 of this chapter.

22 (8) A person who enters into an independent contractor agreement
23 with a nonprofit corporation that is recognized as tax exempt
24 under Section 501(c)(3) of the Internal Revenue Code (as defined
25 in IC 6-3-1-11(a)) to perform youth coaching services on a
26 part-time basis is not an employee for purposes of this chapter.

27 **(9) An officer of a corporation who is the sole officer of the**
28 **corporation is not an employee of the corporation under this**
29 **chapter. An officer of a corporation who is the sole officer of**
30 **the corporation may elect to be an employee of the**
31 **corporation under this chapter. If an officer makes this**
32 **election, the officer must serve written notice of the election**
33 **on the corporation's insurance carrier and the board. An**
34 **officer of a corporation who is the sole officer of the**
35 **corporation may not be considered an employee under this**
36 **chapter until the notice is received by the insurance carrier**
37 **and the board.**

38 (c) As used in this chapter, "minor" means an individual who has
39 not reached seventeen (17) years of age. A minor employee shall be
40 considered as being of full age for all purposes of this chapter.
41 However, if the employee is a minor who, at the time of the last
42 exposure, is employed, required, suffered, or permitted to work in
43 violation of the child labor laws of this state, the amount of
44 compensation and death benefits, as provided in this chapter, shall be
45 double the amount which would otherwise be recoverable. The
46 insurance carrier shall be liable on its policy for one-half (1/2) of the

1 compensation or benefits that may be payable on account of the
2 disability or death of the minor, and the employer shall be wholly liable
3 for the other one-half (1/2) of the compensation or benefits. If the
4 employee is a minor who is not less than sixteen (16) years of age and
5 who has not reached seventeen (17) years of age, and who at the time
6 of the last exposure is employed, suffered, or permitted to work at any
7 occupation which is not prohibited by law, the provisions of this
8 subsection prescribing double the amount otherwise recoverable do not
9 apply. The rights and remedies granted to a minor under this chapter on
10 account of disease shall exclude all rights and remedies of the minor,
11 ~~his~~ **the minor's** parents, ~~his~~ **the minor's** personal representatives,
12 dependents, or next of kin at common law, statutory or otherwise, on
13 account of any disease.

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

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

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

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

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

- 1 (3) In all cases of occupational diseases caused by the inhalation
 2 of asbestos dust, no compensation shall be payable unless
 3 disablement, as defined in subsection (e), occurs within three (3)
 4 years after the last day of the last exposure to the hazards of the
 5 disease if the last day of the last exposure was before July 1, 1985.
 6 (4) In all cases of occupational disease caused by the inhalation
 7 of asbestos dust in which the last date of the last exposure occurs
 8 on or after July 1, 1985, and before July 1, 1988, no compensation
 9 shall be payable unless disablement, as defined in subsection (e),
 10 occurs within twenty (20) years after the last day of the last
 11 exposure.
 12 (5) In all cases of occupational disease caused by the inhalation
 13 of asbestos dust in which the last date of the last exposure occurs
 14 on or after July 1, 1988, no compensation shall be payable unless
 15 disablement (as defined in subsection (e)) occurs within
 16 thirty-five (35) years after the last day of the last exposure.
 17 (g) For the purposes of this chapter, no compensation shall be
 18 payable for or on account of death resulting from any occupational
 19 disease unless death occurs within two (2) years after the date of
 20 disablement. However, this subsection does not bar compensation for
 21 death:
 22 (1) where death occurs during the pendency of a claim filed by an
 23 employee within two (2) years after the date of disablement and
 24 which claim has not resulted in a decision or has resulted in a
 25 decision which is in process of review or appeal; or
 26 (2) where, by agreement filed or decision rendered, a
 27 compensable period of disability has been fixed and death occurs
 28 within two (2) years after the end of such fixed period, but in no
 29 event later than three hundred (300) weeks after the date of
 30 disablement.
 31 (h) As used in this chapter, "billing review service" refers to a
 32 person or an entity that reviews a medical service provider's bills or
 33 statements for the purpose of determining pecuniary liability. The term
 34 includes an employer's worker's compensation insurance carrier if the
 35 insurance carrier performs such a review.
 36 (i) As used in this chapter, "billing review standard" means the data
 37 used by a billing review service to determine pecuniary liability.
 38 (j) As used in this chapter, "community" means a geographic service
 39 area based on ZIP code districts defined by the United States Postal
 40 Service according to the following groupings:
 41 (1) The geographic service area served by ZIP codes with the first
 42 three (3) digits 463 and 464.
 43 (2) The geographic service area served by ZIP codes with the first
 44 three (3) digits 465 and 466.
 45 (3) The geographic service area served by ZIP codes with the first
 46 three (3) digits 467 and 468.

- 1 (4) The geographic service area served by ZIP codes with the first
- 2 three (3) digits 469 and 479.
- 3 (5) The geographic service area served by ZIP codes with the first
- 4 three (3) digits 460, 461 (except 46107), and 473.
- 5 (6) The geographic service area served by the 46107 ZIP code and
- 6 ZIP codes with the first three (3) digits 462.
- 7 (7) The geographic service area served by ZIP codes with the first
- 8 three (3) digits 470, 471, 472, 474, and 478.
- 9 (8) The geographic service area served by ZIP codes with the first
- 10 three (3) digits 475, 476, and 477.
- 11 (k) As used in this chapter, "medical service provider" refers to a
- 12 person or an entity that provides medical services, treatment, or
- 13 supplies to an employee under this chapter.
- 14 (l) As used in this chapter, "pecuniary liability" means the
- 15 responsibility of an employer or the employer's insurance carrier for the
- 16 payment of the charges for each specific service or product for human
- 17 medical treatment provided under this chapter in a defined community,
- 18 equal to or less than the charges made by medical service providers at
- 19 the eightieth percentile in the same community for like services or
- 20 products."
- 21 Renumber all SECTIONS consecutively.
- (Reference is to ESB 486 as printed March 20, 2009.)

Representative Smith V