



January 27, 2009

HOUSE BILL No. 1167

DIGEST OF HB 1167 (Updated January 22, 2009 1:13 pm - DI 96)

Citations Affected: IC 22-3; IC 32-30; IC 34-6; IC 34-20.

Synopsis: Actions based on exposure to hazardous substances. Provides statutes of limitations for causes of action for occupational disease, deficiencies in the design, planning, supervision, construction, or observation of construction of an improvement to real property, and product liability when the cause of action is based on an exposure to a hazardous substance. Provides for a one year period, ending July 1, 2010, to file an otherwise time-barred cause of action based on an exposure to a hazardous substance.

Effective: July 1, 2009.

Tyler, Lawson L

January 13, 2009, read first time and referred to Committee on Labor and Employment.
January 27, 2009, reported — Do Pass.

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HB 1167—LS 6556/DI 102+



January 27, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1167

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

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

1 SECTION 1. IC 22-3-7-9, AS AMENDED BY P.L.201-2005,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 9. (a) As used in this chapter, "employer" includes
4 the state and any political subdivision, any municipal corporation
5 within the state, any individual or the legal representative of a deceased
6 individual, firm, association, limited liability company, or corporation
7 or the receiver or trustee of the same, using the services of another for
8 pay. A parent corporation and its subsidiaries shall each be considered
9 joint employers of the corporation's, the parent's, or the subsidiaries'
10 employees for purposes of sections 6 and 33 of this chapter. Both a
11 lessor and a lessee of employees shall each be considered joint
12 employers of the employees provided by the lessor to the lessee for
13 purposes of sections 6 and 33 of this chapter. The term also includes an
14 employer that provides on-the-job training under the federal School to
15 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth
16 under section 2.5 of this chapter. If the employer is insured, the term
17 includes the employer's insurer so far as applicable. However, the

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

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

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

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

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

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

42 (A) they are licensed real estate agents;

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1 (B) substantially all their remuneration is directly related to
 2 sales volume and not the number of hours worked; and
 3 (C) they have written agreements with real estate brokers
 4 stating that they are not to be treated as employees for tax
 5 purposes.
 6 (5) A person is an independent contractor in the construction
 7 trades and not an employee under this chapter if the person is an
 8 independent contractor under the guidelines of the United States
 9 Internal Revenue Service.
 10 (6) An owner-operator that provides a motor vehicle and the
 11 services of a driver under a written contract that is subject to
 12 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
 13 carrier is not an employee of the motor carrier for purposes of this
 14 chapter. The owner-operator may elect to be covered and have the
 15 owner-operator's drivers covered under a worker's compensation
 16 insurance policy or authorized self-insurance that insures the
 17 motor carrier if the owner-operator pays the premiums as
 18 requested by the motor carrier. An election by an owner-operator
 19 under this subdivision does not terminate the independent
 20 contractor status of the owner-operator for any purpose other than
 21 the purpose of this subdivision.
 22 (7) An unpaid participant under the federal School to Work
 23 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
 24 extent set forth under section 2.5 of this chapter.
 25 (8) A person who enters into an independent contractor agreement
 26 with a nonprofit corporation that is recognized as tax exempt
 27 under Section 501(c)(3) of the Internal Revenue Code (as defined
 28 in IC 6-3-1-11(a)) to perform youth coaching services on a
 29 part-time basis is not an employee for purposes of this chapter.
 30 (c) As used in this chapter, "minor" means an individual who has
 31 not reached seventeen (17) years of age. **For purposes of this chapter**
 32 **the following apply:**
 33 (1) A minor employee shall be considered as being of full age for
 34 all purposes of this chapter. ~~However,~~
 35 (2) If the employee is a minor who, at the time of the last
 36 exposure, is employed, required, suffered, or permitted to work in
 37 violation of the child labor laws of this state, the amount of
 38 compensation and death benefits, as provided in this chapter,
 39 shall be double the amount which would otherwise be
 40 recoverable. The insurance carrier shall be liable on its policy for
 41 one-half (1/2) of the compensation or benefits that may be
 42 payable on account of the disability or death of the minor, and the

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1 employer shall be wholly liable for the other one-half (1/2) of the
2 compensation or benefits. If the employee is a minor who is not
3 less than sixteen (16) years of age and who has not reached
4 seventeen (17) years of age, and who at the time of the last
5 exposure is employed, suffered, or permitted to work at any
6 occupation which is not prohibited by law, ~~the provisions of this~~
7 ~~subsection prescribing double the amount otherwise recoverable~~
8 ~~to subdivision does~~ not apply.

9 (3) The rights and remedies granted to a minor under this chapter
10 on account of disease shall exclude all rights and remedies of the
11 minor, ~~his~~ **the minor's** parents, ~~his~~ **the minor's** personal
12 representatives, dependents, or next of kin at common law,
13 statutory or otherwise, on account of any disease.

14 (d) This chapter does not apply to:

- 15 (1) casual laborers as defined in subsection (b); ~~not to~~
- 16 (2) farm or agricultural employees; ~~not to~~
- 17 (3) household employees; ~~not to~~
- 18 (4) railroad employees engaged in train service as engineers,
19 firemen, conductors, brakemen, flagmen, baggagemen, or
20 foremen in charge of yard engines and helpers assigned thereto;
21 ~~not to their~~
- 22 (5) ~~the employers with respect to these of the employees Also,~~
23 ~~this chapter does not apply to described in subdivision (4); or~~
- 24 (6) employees or their employers with respect to employments in
25 which the laws of the United States provide for compensation or
26 liability for injury to the health, disability, or death by reason of
27 diseases suffered by these employees.

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

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

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

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- 1 of the disease.
- 2 (2) in all cases of occupational disease caused by the exposure to
3 radiation; a hazardous substance (as defined in IC 34-6-2-52),
4 no compensation shall be payable unless disablement, as defined
5 in subsection (e), occurs within two (2) years from the date on
6 which the employee had knowledge of the nature of the
7 employee's occupational disease or, by exercise of reasonable
8 diligence, should have known of the existence of such disease and
9 its causal relationship to the employee's employment.
- 10 (3) In all cases of occupational diseases caused by the inhalation
11 of asbestos dust, no compensation shall be payable unless
12 disablement, as defined in subsection (e), occurs within three (3)
13 years after the last day of the last exposure to the hazards of the
14 disease if the last day of the last exposure was before July 1, 1985.
- 15 (4) In all cases of occupational disease caused by the inhalation
16 of asbestos dust in which the last date of the last exposure occurs
17 on or after July 1, 1985; and before July 1, 1988; no compensation
18 shall be payable unless disablement, as defined in subsection (e),
19 occurs within twenty (20) years after the last day of the last
20 exposure.
- 21 (5) In all cases of occupational disease caused by the inhalation
22 of asbestos dust in which the last date of the last exposure occurs
23 on or after July 1, 1988; no compensation shall be payable unless
24 disablement (as defined in subsection (e)) occurs within
25 thirty-five (35) years after the last day of the last exposure.
- 26 (g) For the purposes of this chapter, no compensation shall be
27 payable for or on account of death resulting from any occupational
28 disease unless death occurs within two (2) years after the date of
29 disablement. However, this subsection does not bar compensation for
30 death:
- 31 (1) where death occurs during the pendency of a claim filed by an
32 employee within two (2) years after the date of disablement and
33 which claim has not resulted in a decision or has resulted in a
34 decision which is in process of review or appeal; or
- 35 (2) where, by agreement filed or decision rendered, a
36 compensable period of disability has been fixed and death occurs
37 within two (2) years after the end of such fixed period; but in no
38 event later than three hundred (300) weeks after the date of
39 disablement.
- 40 in all cases of occupational disease caused by the exposure to a
41 hazardous substance (as defined in IC 34-6-2-52) in which:
42 (1) disablement occurred before July 1, 2009; and

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1 **(2) an action based on the disablement was barred on July 1,**
2 **2009, by a period of limitations or repose in effect before July**
3 **1, 2009;**
4 **the action may be commenced after June 30, 2009, and before July**
5 **1, 2010, notwithstanding any other law to the contrary.**
6 (h) As used in this chapter, "billing review service" refers to a
7 person or an entity that reviews a medical service provider's bills or
8 statements for the purpose of determining pecuniary liability. The term
9 includes an employer's worker's compensation insurance carrier if the
10 insurance carrier performs such a review.
11 (i) As used in this chapter, "billing review standard" means the data
12 used by a billing review service to determine pecuniary liability.
13 (j) As used in this chapter, "community" means a geographic service
14 area based on ZIP code districts defined by the United States Postal
15 Service according to the following groupings:
16 (1) The geographic service area served by ZIP codes with the first
17 three (3) digits 463 and 464.
18 (2) The geographic service area served by ZIP codes with the first
19 three (3) digits 465 and 466.
20 (3) The geographic service area served by ZIP codes with the first
21 three (3) digits 467 and 468.
22 (4) The geographic service area served by ZIP codes with the first
23 three (3) digits 469 and 479.
24 (5) The geographic service area served by ZIP codes with the first
25 three (3) digits 460, 461 (except 46107), and 473.
26 (6) The geographic service area served by the 46107 ZIP code and
27 ZIP codes with the first three (3) digits 462.
28 (7) The geographic service area served by ZIP codes with the first
29 three (3) digits 470, 471, 472, 474, and 478.
30 (8) The geographic service area served by ZIP codes with the first
31 three (3) digits 475, 476, and 477.
32 (k) As used in this chapter, "medical service provider" refers to a
33 person or an entity that provides medical services, treatment, or
34 supplies to an employee under this chapter.
35 (l) As used in this chapter, "pecuniary liability" means the
36 responsibility of an employer or the employer's insurance carrier for the
37 payment of the charges for each specific service or product for human
38 medical treatment provided under this chapter in a defined community,
39 equal to or less than the charges made by medical service providers at
40 the eightieth percentile in the same community for like services or
41 products.
42 SECTION 2. IC 32-30-1-5, AS AMENDED BY P.L.79-2005,

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1 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 2 JULY 1, 2009]: Sec. 5. (a) As used in this section, "designer" means a
 3 person who:
 4 (1) designs, plans, supervises, or observes the construction of an
 5 improvement to real property; or
 6 (2) constructs an improvement to real property.
 7 (b) As used in this section, "possessor" means a person having
 8 ownership, possession, or control of real property at the time an alleged
 9 deficiency in an improvement to the real property causes injury or
 10 wrongful death.
 11 (c) As used in this section, "deficiency" does not mean a failure by
 12 a possessor to use reasonable care to maintain an improvement to real
 13 property following a substantial completion of an improvement.
 14 (d) An action to recover damages, whether based upon contract, tort,
 15 nuisance, or another legal remedy, for:
 16 (1) a deficiency or an alleged deficiency in the design, planning,
 17 supervision, construction, or observation of construction of an
 18 improvement to real property;
 19 (2) an injury to real or personal property arising out of a
 20 deficiency; or
 21 (3) an injury or wrongful death of a person arising out of a
 22 deficiency;
 23 may not be brought against a designer or possessor unless the action is
 24 commenced within the earlier of ten (10) years after the date of
 25 substantial completion of the improvement or twelve (12) years after
 26 the completion and submission of plans and specifications to the owner
 27 if the action is for a deficiency in the design of the improvement.
 28 **(e) An action for a deficiency or alleged deficiency in the design,**
 29 **planning, supervision, construction, or observation of construction**
 30 **of an improvement to real property that is based on personal**
 31 **injury, disability, disease, or death from an exposure to a**
 32 **hazardous substance (as defined in IC 34-6-2-52) that occurs**
 33 **within:**
 34 **(1) ten (10) years after the date of substantial completion of**
 35 **the improvement; or**
 36 **(2) twelve (12) years after the completion and submission of**
 37 **plans and specifications to the owner;**
 38 **must be commenced within two (2) years after the cause of action**
 39 **accrues. The subsequent development of additional personal**
 40 **injury, disability, disease, or death is a new and separate cause of**
 41 **action under this subsection.**
 42 (f) A cause of action under subsection (e) accrues on the date

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when the injured person knows:

(1) that the person has a personal injury, disability, or disease caused by exposure to a hazardous substance (as defined in IC 34-6-2-52); and

(2) that the exposure occurred as a result of a deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property.

(g) The limitations period described in subsection (e) applies to all actions for personal injury, disease, disability, or death caused by exposure to a hazardous substance (as defined in IC 34-6-2-52) that occurred as a result of a deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property, whether those actions accrue before, on, or after July 1, 2009.

(h) An action for personal injury, disease, disability, or death caused by exposure to a hazardous substance (as defined in IC 34-6-2-52) that occurred as a result of a deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property that was barred on July 1, 2009, by a period of limitations or repose in effect before July 1, 2009, may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary.

SECTION 3. IC 32-30-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) This section applies to actions commenced under section 5(d) of this chapter.

(a) Notwithstanding section 5 of this chapter, (b) If an injury to or wrongful death of a person occurs during the ninth or tenth year after substantial completion of an improvement to real property, an action in tort to recover damages for the injury or wrongful death may be brought within two (2) years after the date on which the injury occurred, irrespective of the date of death.

(c) However, an action may not be brought more than:

(1) twelve (12) years after the substantial completion of construction of the improvement; or

(2) fourteen (14) years after the completion and submission of plans and specifications to the owner, if the action is for a deficiency in design;

whichever comes first.

SECTION 4. IC 34-6-2-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 52. "Hazardous substance", for purposes of IC 34-20-3-2 and IC 34-30-6, means:

(1) a material or waste that has been determined to be hazardous

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1 or potentially hazardous to any individual, to property, or to the
2 environment by the United States Environmental Protection
3 Agency, the federal Nuclear Regulatory Commission, the United
4 States Department of Transportation, the solid waste management
5 board, or the United States Occupational Safety and Health
6 Agency or any agent or designee of any of the above mentioned
7 boards, agencies, or commission; or

8 (2) any substance that may be potentially hazardous to any person,
9 to property or to the environment.

10 SECTION 5. IC 34-20-3-2 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A product
12 liability action that is based on

- 13 (1) ~~property damage resulting from asbestos;~~ or
- 14 (2) ~~personal injury, disability, disease, or death resulting from~~
15 ~~exposure to asbestos;~~ **a hazardous substance**

16 must be commenced within two (2) years after the cause of action
17 accrues. The subsequent development of an additional ~~asbestos related~~
18 ~~disease or injury~~ is a new injury and is a separate cause of action.

19 (b) A product liability action for personal injury, disability, disease,
20 or death resulting from exposure to ~~asbestos~~ **a hazardous substance**
21 accrues on the date when the injured person knows that the person has
22 ~~an asbestos related~~ **a disease or injury caused by exposure to a**
23 **hazardous substance.**

24 (c) ~~A product liability action for property damage accrues on the~~
25 ~~date when the injured person knows that the property damage has~~
26 ~~resulted from asbestos.~~

- 27 (d) This section applies only to product liability actions against:
- 28 (1) ~~persons who mined and sold commercial asbestos;~~ and
- 29 (2) ~~funds that have, as a result of bankruptcy proceedings or to~~
30 ~~avoid bankruptcy proceedings, been created for the payment of~~
31 ~~asbestos related disease claims or asbestos related property~~
32 ~~damage claims.~~

33 (e) For the purposes of IC 1-1-1-8, if any part of this section is held
34 invalid, the entire section is void.

35 (f) (c) Except for the cause of action expressly recognized in this
36 section, this section does not otherwise modify the limitation of action
37 or repose period contained in section 1 of this chapter.

38 (d) **This section applies to all product liability actions that are**
39 **based on personal injury, disability, disease, or death resulting**
40 **from exposure to a hazardous substance that accrue before, on, or**
41 **after July 1, 2009.**

42 (e) A product liability action that is based on personal injury,

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1 **disease, disability, or death resulting from exposure to a hazardous**
2 **substance that was barred on July 1, 2009, by a period of**
3 **limitations or repose that was in effect before July 1, 2009, may be**
4 **commenced after June 30, 2009, and before July 1, 2010,**
5 **notwithstanding any other law to the contrary.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1167, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

NIEZGODSKI, Chair

Committee Vote: yeas 6, nays 5.

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