HOUSE BILL No. 1167

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3-7-9; IC 32-30-1; IC 34-6-2-52; IC 34-20-3-2.

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.

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Introduced

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:

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

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

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

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

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

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

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

(A) they are licensed real estate agents;

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

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

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

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

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

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

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. **For purposes of this chapter the following apply:**

(1) A minor employee shall be considered as being of full age for all purposes of this chapter. ~~However,~~

(2) If the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the

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

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

(d) This chapter does not apply to:

(1) casual laborers as defined in subsection (b); ~~nor to~~

(2) farm or agricultural employees; ~~nor to~~

(3) household employees; ~~nor to~~

(4) railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto; ~~nor to their~~

(5) the employers ~~with respect to these~~ **of the** employees ~~Also, this chapter does not apply to~~ **described in subdivision (4); or**

(6) employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

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

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

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

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~~of the disease.~~

~~(2)~~ in all cases of occupational disease caused by the exposure to ~~radiation,~~ **a hazardous substance (as defined in IC 34-6-2-52),** no compensation shall be payable unless disablement, as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of the employee's occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to the employee's employment.

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

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

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

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

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

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

in all cases of occupational disease caused by the exposure to a hazardous substance (as defined in IC 34-6-2-52) in which:

(1) disablement occurred before July 1, 2009; and

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(2) an action based on the disablement was barred on July 1, 2009, by a period of limitations or repose in effect before July 1, 2009;

the action may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. IC 32-30-1-5, AS AMENDED BY P.L.79-2005,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this section, "designer" means a person who:

(1) designs, plans, supervises, or observes the construction of an improvement to real property; or

(2) constructs an improvement to real property.

(b) As used in this section, "possessor" means a person having ownership, possession, or control of real property at the time an alleged deficiency in an improvement to the real property causes injury or wrongful death.

(c) As used in this section, "deficiency" does not mean a failure by a possessor to use reasonable care to maintain an improvement to real property following a substantial completion of an improvement.

(d) An action to recover damages, whether based upon contract, tort, nuisance, or another legal remedy, for:

(1) a deficiency or an alleged deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property;

(2) an injury to real or personal property arising out of a deficiency; or

(3) an injury or wrongful death of a person arising out of a deficiency;

may not be brought against a designer or possessor unless the action is commenced within the earlier of ten (10) years after the date of substantial completion of the improvement or twelve (12) years after the completion and submission of plans and specifications to the owner if the action is for a deficiency in the design of the improvement.

(e) An action for a deficiency or alleged deficiency in the design, planning, supervision, construction, or observation of construction of an improvement to real property that is based on personal injury, disability, disease, or death from an exposure to a hazardous substance (as defined in IC 34-6-2-52) that occurs within:

(1) ten (10) years after the date of substantial completion of the improvement; or

(2) twelve (12) years after the completion and submission of plans and specifications to the owner;

must be commenced within two (2) years after the cause of action accrues. The subsequent development of additional personal injury, disability, disease, or death is a new and separate cause of action under this subsection.

(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.

~~(b)~~ **(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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or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies, or commission; or

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

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

~~(1) property damage resulting from asbestos; or~~

~~(2)~~ personal injury, disability, disease, or death resulting from exposure to ~~asbestos;~~ **a hazardous substance**

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

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

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

~~(d) This section applies only to product liability actions against:~~

~~(1) persons who mined and sold commercial asbestos; and~~

~~(2) funds that have, as a result of bankruptcy proceedings or to avoid bankruptcy proceedings, been created for the payment of asbestos related disease claims or asbestos related property damage claims.~~

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

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

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

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

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disease, disability, or death resulting from exposure to a hazardous substance that was barred on July 1, 2009, by a period of limitations or repose that was 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.

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