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# SENATE BILL No. 337

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-33-3; IC 20-37-2-8; IC 22-3.

**Synopsis:** Child labor law. Provides that a legal entity whose ownership is limited to the parents of an employed child or persons standing in place of the parent of an employed child is not subject to certain provisions of child labor law. Provides for civil penalties to be assessed by the department of labor (department) concerning employment certificate violations and hazardous occupation violations of child labor law, to be deposited in the employment of youth fund. Provides that all blank forms necessary to carry out child labor law regulation be prepared by the department and supplied to issuing officers by means of electronic or printed publication, and repeals language providing that funds to pay expenses incurred by the department in printing and distributing these forms are appropriated annually out of any money in the state general fund that is not otherwise appropriated. Provides that the department may adopt rules to implement child labor law. Provides for additional benefits under worker's compensation and occupational disease law for a minor who suffers harm when employed in an occupation designated as hazardous under the child labor provisions of the federal Fair Labor Standards Act.

**Effective:** July 1, 2012.

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**Waltz**

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January 9, 2012, read first time and referred to Committee on Pensions and Labor.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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**SENATE BILL No. 337**



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 20-33-3-1, AS ADDED BY P.L.1-2005, SECTION  
2 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2012]: Sec. 1. This chapter does not apply to:  
4 (1) a parent who employs the parent's own child; ~~or~~  
5 (2) a person standing in place of a parent who employs a child in  
6 the person's custody; **or**  
7 (3) **a legal entity whose ownership is limited to the parents of**  
8 **the employed child or persons standing in place of the parent**  
9 **of the employed child;**  
10 except ~~for~~ **in the instances of** (1) underage employment (section 31(a)  
11 of this chapter), (2) employment during school hours (section 31(b) of  
12 this chapter), and (3) employment in hazardous occupations designated  
13 by federal law (**as set forth in** section 35 of this chapter).  
14 SECTION 2. IC 20-33-3-16, AS ADDED BY P.L. 1-2005,  
15 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2012]. Sec. 16. (a) All blank forms necessary to carry out this  
17 chapter shall be prepared by the department of labor and supplied to



1 issuing officers **by means of electronic or printed publication.**

2 (b) ~~Funds to pay expenses incurred by the department of labor in~~  
 3 ~~printing and distributing these forms are appropriated annually out of~~  
 4 ~~any money in the state general fund that is not otherwise appropriated.~~

5 SECTION 3. IC 20-33-3-36, AS ADDED BY P.L.1-2005,  
 6 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2012]: Sec. 36. (a) This section does not provide an exception  
 8 to the limit on the number of hours a child is permitted to work under  
 9 sections 22 through 30 of this chapter.

10 (b) It is unlawful for a person, firm, limited liability company, or  
 11 corporation to permit a child who is:

- 12 (1) less than eighteen (18) years of age; and  
 13 (2) employed by the person, firm, limited liability company, or  
 14 corporation;

15 to work after 10 p.m. and before 6 a.m. in an establishment that is open  
 16 to the public unless another employee at least eighteen (18) years of  
 17 age also works in the establishment during the same hours as the child.

18 (c) A violation of subsection (b) is a hazardous occupation violation  
 19 subject to ~~section sections 40.3 and~~ 41 of this chapter.

20 SECTION 4. IC 20-33-3-39, AS AMENDED BY P.L.182-2006,  
 21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2012]: Sec. 39. An individual who is an employer, a firm, a  
 23 limited liability company, or a corporation that violates this chapter  
 24 may be assessed the civil penalties described in this section by the  
 25 department of labor. For ~~an employment certificate violation under~~  
 26 ~~section 5 or 14 of this chapter~~, a termination notice violation under  
 27 section 12 of this chapter, an hour violation of not more than thirty (30)  
 28 minutes under sections 22 through 28 of this chapter, a violation of  
 29 section 23(3) or 24(3) of this chapter, or a posting violation under  
 30 section 34 of this chapter, the civil penalties are as follows:

- 31 (1) A warning letter for any violations identified during an initial  
 32 inspection.  
 33 (2) Fifty dollars (\$50) per instance for a second violation  
 34 identified in a subsequent inspection.  
 35 (3) Seventy-five dollars (\$75) per instance for a third violation  
 36 that is identified in a subsequent inspection.  
 37 (4) One hundred dollars (\$100) per instance for a fourth or  
 38 subsequent violation that is identified in an inspection subsequent  
 39 to the inspection under subdivision (3). ~~and occurs not more than~~  
 40 ~~two (2) years after a prior violation.~~

41 SECTION 5. IC 20-33-3-39.5 IS ADDED TO THE INDIANA  
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2012]: **Sec. 39.5. An individual who is an**  
 2 **employer, a firm, a limited liability company, or a corporation that**  
 3 **violates section 5 or 14 of this chapter concerning an employment**  
 4 **certificate violation is subject to the following civil penalties to be**  
 5 **assessed by the department of labor:**

6 (1) **Fifty dollars (\$50) for the first violation identified during**  
 7 **an initial inspection.**

8 (2) **One hundred dollars (\$100) for the second violation**  
 9 **identified in a subsequent inspection.**

10 (3) **Two hundred dollars (\$200) for a third or subsequent**  
 11 **violation that is identified in an inspection subsequent to the**  
 12 **inspection under subdivision (2).**

13 SECTION 6. IC 20-33-3-40, AS AMENDED BY P.L.182-2006,  
 14 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2012]: Sec. 40. An individual who is an employer, a firm, a  
 16 limited liability company, or a corporation that violates this chapter  
 17 may be assessed the civil penalties described in this section by the  
 18 department of labor. For an hour violation of more than thirty (30)  
 19 minutes under sections 22 through 28 of this chapter, each violation of  
 20 section 30 of this chapter, ~~an age violation under section 31 or 32 of~~  
 21 ~~this chapter, or each minor employed in violation of section 31(b) of~~  
 22 ~~this chapter, or a hazardous occupation violation under section 35 or 36~~  
 23 ~~of this chapter,~~ the civil penalties are as follows:

24 (1) A warning letter for any violations identified during an initial  
 25 inspection.

26 (2) One hundred dollars (\$100) per instance for each violation  
 27 identified in a subsequent inspection.

28 (3) Two hundred dollars (\$200) per instance for a third violation  
 29 that is identified in a subsequent inspection.

30 (4) Four hundred dollars (\$400) per instance for a fourth or  
 31 subsequent violation that is identified in an inspection subsequent  
 32 to the inspection under subdivision (3). ~~and occurs not more than~~  
 33 ~~two (2) years after a prior violation.~~

34 SECTION 7. IC 20-33-3-40.3 IS ADDED TO THE INDIANA  
 35 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 36 [EFFECTIVE JULY 1, 2012]: **Sec. 40.3. An individual who is an**  
 37 **employer, a firm, a limited liability company, or a corporation that**  
 38 **violates section 35 or 36(b) of this chapter concerning a hazardous**  
 39 **occupation violation is subject to the following civil penalties to be**  
 40 **assessed by the department of labor:**

41 (1) **One thousand dollars (\$1,000) for the first violation.**

42 (2) **Five thousand dollars (\$5,000) for the second and**

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1           **subsequent violation.**

2           **(3) Not less than eleven thousand dollars (\$11,000) and not**  
 3           **more than fifty thousand dollars (\$50,000) for a violation if a**  
 4           **child suffers serious bodily injury (as defined in**  
 5           **IC 35-41-1-25) or death.**

6           SECTION 8. IC 20-33-3-40.5 IS ADDED TO THE INDIANA  
 7           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 8           [EFFECTIVE JULY 1, 2012]: **Sec. 40.5. An individual who is an**  
 9           **employer, a firm, a limited liability company, or a corporation that**  
 10          **violates section 31 or 32 of this chapter concerning an age violation**  
 11          **is subject to the following civil penalties to be assessed by the**  
 12          **department of labor:**

13           **(1) Five hundred dollars (\$500) for the first violation.**

14           **(2) One thousand dollars (\$1,000) for the second and**  
 15           **subsequent violation.**

16          SECTION 9. IC 20-33-3-41, AS ADDED BY P.L.1-2005,  
 17          SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18          JULY 1, 2012]: **Sec. 41. (a) A civil penalty assessed under section 39,**  
 19          **or 39.5, 40, 40.3, or 40.5 of this chapter:**

20           (1) is subject to IC 4-21.5-3-6; and

21           (2) becomes effective without a proceeding under IC 4-21.5-3  
 22           unless a person requests an administrative review not later than  
 23           thirty (30) days after notice of the assessment is given.

24          (b) For purposes of determining:

25           (1) whether a second **or subsequent** violation has occurred when  
 26           assessing a civil penalty under subsection (a), a **first prior**  
 27           violation expires ~~one (1) year~~ **five (5) years** after the date of  
 28           issuance of a **the most recent** warning letter **or report or notice**  
 29           **of violation** by the department of labor under subsection (a); and

30           (2) recurring violations of this section, each location of an  
 31           employer shall be considered separate and distinct from another  
 32           location of the same employer.

33          SECTION 10. IC 20-33-3-44 IS ADDED TO THE INDIANA  
 34          CODE AS A NEW SECTION TO READ AS FOLLOWS  
 35          [EFFECTIVE JULY 1, 2012]: **Sec. 44. The commissioner of the**  
 36          **department of labor may adopt rules under IC 4-22-2 necessary to**  
 37          **implement this chapter, provided the rules are not inconsistent**  
 38          **with this chapter or other applicable statutes.**

39          SECTION 11. IC 20-37-2-8, AS AMENDED BY P.L.234-2007,  
 40          SECTION 129, IS AMENDED TO READ AS FOLLOWS  
 41          [EFFECTIVE JULY 1, 2012]: **Sec. 8. (a) A student in career and**  
 42          **technical education and employed under section 7 of this chapter:**

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1 (1) is entitled to the rights of recovery of a worker of at least  
 2 seventeen (17) years of age under the worker's compensation and  
 3 occupational diseases laws (IC 22-3-2 through IC 22-3-7); and  
 4 (2) may not recover any additional benefit otherwise payable as  
 5 a result of being less than ~~seventeen (17)~~ **eighteen (18)** years of  
 6 age under the definition of a minor in IC 22-3-6-1.

7 The student is considered the employee of the employer while  
 8 performing services for the employer under section 7 of this chapter.

9 (b) A student performing services for an employer under section 7  
 10 of this chapter is considered a full-time employee in computing  
 11 compensation for permanent impairment under the worker's  
 12 compensation law (IC 22-3-2 through IC 22-3-6).

13 (c) Employers and students under section 7 of this chapter are  
 14 exempt from IC 20-33-3-35.

15 SECTION 12. IC 22-3-6-1, AS AMENDED BY P.L.168-2011,  
 16 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 2012]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the  
 18 context otherwise requires:

19 (a) "Employer" includes the state and any political subdivision, any  
 20 municipal corporation within the state, any individual or the legal  
 21 representative of a deceased individual, firm, association, limited  
 22 liability company, or corporation or the receiver or trustee of the same,  
 23 using the services of another for pay. A parent corporation and its  
 24 subsidiaries shall each be considered joint employers of the  
 25 corporation's, the parent's, or the subsidiaries' employees for purposes  
 26 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of  
 27 employees shall each be considered joint employers of the employees  
 28 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and  
 29 IC 22-3-3-31. If the employer is insured, the term includes the  
 30 employer's insurer so far as applicable. However, the inclusion of an  
 31 employer's insurer within this definition does not allow an employer's  
 32 insurer to avoid payment for services rendered to an employee with the  
 33 approval of the employer. The term also includes an employer that  
 34 provides on-the-job training under the federal School to Work  
 35 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in  
 36 IC 22-3-2-2.5. The term does not include a nonprofit corporation that  
 37 is recognized as tax exempt under Section 501(c)(3) of the Internal  
 38 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the  
 39 corporation enters into an independent contractor agreement with a  
 40 person for the performance of youth coaching services on a part-time  
 41 basis.

42 (b) "Employee" means every person, including a minor, in the

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1 service of another, under any contract of hire or apprenticeship, written  
 2 or implied, except one whose employment is both casual and not in the  
 3 usual course of the trade, business, occupation, or profession of the  
 4 employer.

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

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

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

35 (4) An owner of a sole proprietorship may elect to include the  
 36 owner as an employee under IC 22-3-2 through IC 22-3-6 if the  
 37 owner is actually engaged in the proprietorship business. If the  
 38 owner makes this election, the owner must serve upon the owner's  
 39 insurance carrier and upon the board written notice of the  
 40 election. No owner of a sole proprietorship may be considered an  
 41 employee under IC 22-3-2 through IC 22-3-6 until the notice has  
 42 been received. If the owner of a sole proprietorship:

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

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

5 (9) A member or manager in a limited liability company may elect  
 6 to include the member or manager as an employee under  
 7 IC 22-3-2 through IC 22-3-6 if the member or manager is actually  
 8 engaged in the limited liability company business. If a member or  
 9 manager makes this election, the member or manager must serve  
 10 upon the member's or manager's insurance carrier and upon the  
 11 board written notice of the election. A member or manager may  
 12 not be considered an employee under IC 22-3-2 through IC 22-3-6  
 13 until the notice has been received.

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

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

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

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

28 (2) If the employee is a minor (**as defined in IC 1-1-4-5(8)**) who,  
 29 at the time of the accident, is employed, required, suffered, or  
 30 permitted to work in violation of IC 20-33-3-35, the amount of  
 31 compensation and death benefits, as provided in IC 22-3-2  
 32 through IC 22-3-6, shall be ~~double~~ the amount ~~which would~~  
 33 ~~otherwise be recoverable~~. **determined in STEP SIX of the**  
 34 **following formula:**

35 **STEP ONE: Determine the wages or salary that the minor**  
 36 **employee received from the employer for the last full**  
 37 **month before the date of the personal injury or death by**  
 38 **accident.**

39 **STEP TWO: Multiply the STEP ONE amount by ten (10).**

40 **STEP THREE: Multiply the STEP TWO amount by twelve**  
 41 **(12).**

42 **STEP FOUR: Determine the compensation and death**

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**benefits, as provided in IC 22-3-2 through IC 22-3-6, to be paid to the minor employee or personal representative (as defined in IC 30-4-1-2(12)) of the minor employee.**

**STEP FIVE: Multiply the STEP FOUR amount by three (3).**

**STEP SIX: Determine the greater of the following:**

**(A) The STEP THREE amount.**

**(B) The STEP FIVE amount.**

The insurance carrier shall be liable on its policy for one-half (1/2) of the may seek reimbursement from the employer for any compensation or benefits that may be payable paid to the employee or personal representative of the minor employee on account of the personal injury or death by accident of the minor and the employer shall be liable for the other one-half (1/2) of the compensation or benefits: **employee under this subsection above the compensation and death benefits payable as otherwise provided in IC 22-3-2 through IC 22-23-6.** If the employee is a minor (as defined in IC 1-1-4-5(8)) 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 accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

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

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

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1 (1) If the injured employee lost seven (7) or more calendar days  
 2 during this period, although not in the same week, then the  
 3 earnings for the remainder of the fifty-two (52) weeks shall be  
 4 divided by the number of weeks and parts thereof remaining after  
 5 the time lost has been deducted.

6 (2) Where the employment prior to the injury extended over a  
 7 period of less than fifty-two (52) weeks, the method of dividing  
 8 the earnings during that period by the number of weeks and parts  
 9 thereof during which the employee earned wages shall be  
 10 followed, if results just and fair to both parties will be obtained.  
 11 Where by reason of the shortness of the time during which the  
 12 employee has been in the employment of the employee's employer  
 13 or of the casual nature or terms of the employment it is  
 14 impracticable to compute the average weekly wages, as defined  
 15 in this subsection, regard shall be had to the average weekly  
 16 amount which during the fifty-two (52) weeks previous to the  
 17 injury was being earned by a person in the same grade employed  
 18 at the same work by the same employer or, if there is no person so  
 19 employed, by a person in the same grade employed in the same  
 20 class of employment in the same district.

21 (3) Wherever allowances of any character made to an employee  
 22 in lieu of wages are a specified part of the wage contract, they  
 23 shall be deemed a part of the employee's earnings.

24 (4) In computing the average weekly wages to be used in  
 25 calculating an award for permanent impairment under  
 26 IC 22-3-3-10 for a student employee in an approved training  
 27 program under IC 20-37-2-7, the following formula shall be used.  
 28 Calculate the product of:  
 29 (A) the student employee's hourly wage rate; multiplied by  
 30 (B) forty (40) hours.

31 The result obtained is the amount of the average weekly wages for  
 32 the student employee.

33 (e) "Injury" and "personal injury" mean only injury by accident  
 34 arising out of and in the course of the employment and do not include  
 35 a disease in any form except as it results from the injury.

36 (f) "Billing review service" refers to a person or an entity that  
 37 reviews a medical service provider's bills or statements for the purpose  
 38 of determining pecuniary liability. The term includes an employer's  
 39 worker's compensation insurance carrier if the insurance carrier  
 40 performs such a review.

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

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

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

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

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

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

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

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

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

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

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

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

29 SECTION 13. IC 22-3-7-9, AS AMENDED BY P.L.168-2011,  
30 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2012]: Sec. 9. (a) As used in this chapter, "employer" includes  
32 the state and any political subdivision, any municipal corporation  
33 within the state, any individual or the legal representative of a deceased  
34 individual, firm, association, limited liability company, or corporation  
35 or the receiver or trustee of the same, using the services of another for  
36 pay. A parent corporation and its subsidiaries shall each be considered  
37 joint employers of the corporation's, the parent's, or the subsidiaries'  
38 employees for purposes of sections 6 and 33 of this chapter. Both a  
39 lessor and a lessee of employees shall each be considered joint  
40 employers of the employees provided by the lessor to the lessee for  
41 purposes of sections 6 and 33 of this chapter. The term also includes an  
42 employer that provides on-the-job training under the federal School to

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1 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth  
 2 under section 2.5 of this chapter. If the employer is insured, the term  
 3 includes the employer's insurer so far as applicable. However, the  
 4 inclusion of an employer's insurer within this definition does not allow  
 5 an employer's insurer to avoid payment for services rendered to an  
 6 employee with the approval of the employer. The term does not include  
 7 a nonprofit corporation that is recognized as tax exempt under Section  
 8 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))  
 9 to the extent the corporation enters into an independent contractor  
 10 agreement with a person for the performance of youth coaching  
 11 services on a part-time basis.

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

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

22 (2) An owner of a sole proprietorship may elect to include the  
 23 owner as an employee under this chapter if the owner is actually  
 24 engaged in the proprietorship business. If the owner makes this  
 25 election, the owner must serve upon the owner's insurance carrier  
 26 and upon the board written notice of the election. No owner of a  
 27 sole proprietorship may be considered an employee under this  
 28 chapter unless the notice has been received. If the owner of a sole  
 29 proprietorship:

30 (A) is an independent contractor in the construction trades and  
 31 does not make the election provided under this subdivision,  
 32 the owner must obtain a certificate of exemption under section  
 33 34.5 of this chapter; or

34 (B) is an independent contractor and does not make the  
 35 election provided under this subdivision, the owner may obtain  
 36 a certificate of exemption under ~~IC 22-3-2-14.5~~ **section 34.5**  
 37 **of this chapter.**

38 (3) A partner in a partnership may elect to include the partner as  
 39 an employee under this chapter if the partner is actually engaged  
 40 in the partnership business. If a partner makes this election, the  
 41 partner must serve upon the partner's insurance carrier and upon  
 42 the board written notice of the election. No partner may be

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1 considered an employee under this chapter until the notice has  
2 been received. If a partner in a partnership:

3 (A) is an independent contractor in the construction trades and  
4 does not make the election provided under this subdivision,  
5 the partner must obtain a certificate of exemption under  
6 section 34.5 of this chapter; or

7 (B) is an independent contractor and does not make the  
8 election provided under this subdivision, the partner may  
9 obtain a certificate of exemption under IC ~~22-3-2-14.5~~. **section**  
10 **34.5 of this chapter.**

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

13 (A) they are licensed real estate agents;

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

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

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

23 (6) An owner-operator that provides a motor vehicle and the  
24 services of a driver under a written contract that is subject to  
25 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor  
26 carrier is not an employee of the motor carrier for purposes of this  
27 chapter. The owner-operator may elect to be covered and have the  
28 owner-operator's drivers covered under a worker's compensation  
29 insurance policy or authorized self-insurance that insures the  
30 motor carrier if the owner-operator pays the premiums as  
31 requested by the motor carrier. An election by an owner-operator  
32 under this subdivision does not terminate the independent  
33 contractor status of the owner-operator for any purpose other than  
34 the purpose of this subdivision.

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

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

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1 (9) An officer of a corporation who is the sole officer of the  
 2 corporation is an employee of the corporation under this chapter.  
 3 An officer of a corporation who is the sole officer of the  
 4 corporation may elect not to be an employee of the corporation  
 5 under this chapter. If an officer makes this election, the officer  
 6 must serve written notice of the election on the corporation's  
 7 insurance carrier and the board. An officer of a corporation who  
 8 is the sole officer of the corporation may not be considered to be  
 9 excluded as an employee under this chapter until the notice is  
 10 received by the insurance carrier and the board.

11 (c) As used in this chapter, "minor" means an individual who has  
 12 not reached seventeen (17) years of age.

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

15 (2) If the employee is a minor (**as defined in IC 1-1-4-5(8)**) who,  
 16 at the time of the last exposure, is employed, required, suffered,  
 17 or permitted to work in violation of ~~the child labor laws of this~~  
 18 ~~state, IC 20-33-3-35,~~ the amount of compensation and death  
 19 benefits, as provided in this chapter, shall be ~~double~~ the amount  
 20 ~~which would otherwise be recoverable. determined in STEP SIX~~  
 21 **of the following formula:**

22 **STEP ONE: Determine the wages or salary that the minor**  
 23 **employee received from the employer for the last full**  
 24 **month before the date of the personal injury or death by**  
 25 **accident.**

26 **STEP TWO: Multiply the STEP ONE amount by ten (10).**

27 **STEP THREE: Multiply the STEP TWO amount by twelve**  
 28 **(12).**

29 **STEP FOUR: Determine the compensation and death**  
 30 **benefits, as provided in this chapter, to be paid to the**  
 31 **minor employee or personal representative (as defined in**  
 32 **IC 30-4-1-2(12)) of the minor employee.**

33 **STEP FIVE: Multiply the STEP FOUR amount by three**  
 34 **(3).**

35 **STEP SIX: Determine the greater of the following:**

36 **(A) The STEP THREE amount.**

37 **(B) The STEP FIVE amount.**

38 The insurance carrier ~~shall be liable on its policy for one-half (1/2) of~~  
 39 ~~the~~ **may seek reimbursement from the employer for any**  
 40 ~~compensation or benefits that may be~~ **are payable to the minor**  
 41 **employee or personal representative of the minor employee on**  
 42 ~~account of the disability or death by occupational disease~~ **of the minor**

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

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

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

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

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

41 (2) In all cases of occupational disease caused by the exposure to  
 42 radiation, no compensation shall be payable unless disablement,

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

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

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

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

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

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

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

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

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

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

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

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

30 SECTION 14. IC 22-3-7-9.2 IS REPEALED [EFFECTIVE JULY  
 31 1, 2012]. ~~Sec. 9.2: As used in section 9(e) of this chapter, the term~~  
 32 ~~"violation of the child labor laws of this state" means a violation of~~  
 33 ~~IC 20-33-3-35. The term does not include a violation of any other~~  
 34 ~~provision of IC 20-33-3.~~

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