

# HOUSE BILL No. 1325

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-14-3; IC 22-3.

**Synopsis:** Mobile support unit personnel for disaster relief. Provides that certain individuals serving as members of a mobile support unit are considered to be temporary employees of the state for purposes of worker's compensation law and worker's occupational diseases law. Authorizes the state to reimburse a political subdivision for a backfill employee necessary for the political subdivision to fill the position and duty of an employee deployed to a mobile support unit, but only if and to the extent that the cost of the backfill employee represents an extra cost to the political subdivision. Makes corresponding changes.

**Effective:** July 1, 2013.

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**Frye R, Niemeyer, Forestal**

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January 17, 2013, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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## HOUSE BILL No. 1325



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

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

1 SECTION 1. IC 10-14-3-0.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2013]: **Sec. 0.5. As used in this chapter, "backfill employee"**  
4 **means an employee of a political subdivision who performs the**  
5 **duties of a mobile support unit member during the deployment of**  
6 **the mobile support unit member.**

7 SECTION 2. IC 10-14-3-15 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 15. (a) Any function  
9 under this chapter and any other activity relating to emergency  
10 management is a governmental function. The state, any political  
11 subdivision, any other agencies of the state or political subdivision of  
12 the state, or, except in cases of willful misconduct, gross negligence, or  
13 bad faith, any emergency management worker complying with or  
14 reasonably attempting to comply with this chapter or any order or rule  
15 adopted under this chapter, or under any ordinance relating to blackout  
16 or other precautionary measures enacted by any political subdivision  
17 of the state, is not liable for the death of or injury to persons or for



1 damage to property as a result of any such activity. This section does  
2 not affect the right of any person to receive:

3 (1) benefits to which the person would otherwise be entitled  
4 under:

5 (A) this chapter;

6 (B) the worker's compensation law (IC 22-3-2 through  
7 IC 22-3-6); or

8 (C) any pension law; or

9 (2) any benefits or compensation under any federal law.

10 (b) Any requirement for a license to practice any professional,  
11 mechanical, or other skill does not apply to any authorized emergency  
12 management worker who, in the course of performing duties as an  
13 emergency management worker, practices a professional, mechanical,  
14 or other skill during a disaster emergency.

15 (c) **Except as provided in subsection (d)**, a volunteer working as  
16 an authorized emergency management worker may be covered by the  
17 medical treatment and burial expense provisions of the worker's  
18 compensation law (IC 22-3-2 through IC 22-3-6) and the worker's  
19 occupational diseases law (IC 22-3-7). If compensability of the injury  
20 is an issue, the administrative procedures of IC 22-3-2 through  
21 IC 22-3-7 shall be used to determine the issue.

22 **(d) An individual described in section 19(c)(2) of this chapter is**  
23 **considered to be a temporary employee of the state for purposes of**  
24 **the worker's compensation law (IC 22-3-2 through IC 22-3-6) and**  
25 **the worker's occupational diseases law (IC 22-3-7).**

26 SECTION 3. IC 10-14-3-19, AS AMENDED BY P.L.1-2007,  
27 SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2013]: Sec. 19. (a) The governor, or the executive director at  
29 the request of the governor, may establish the number of mobile  
30 support units necessary to respond to a disaster, public health  
31 emergency, public safety emergency, or other event that requires  
32 emergency action. A mobile support unit may consist of one (1) or  
33 more individuals. The executive director shall appoint a commander for  
34 each unit who has primary responsibility for the:

35 (1) organization;

36 (2) administration; and

37 (3) operation;

38 of the unit. Mobile support units shall be called to duty for training, an  
39 exercise, or a response upon orders of the governor or the executive  
40 director and shall perform the units' functions in any part of Indiana or  
41 in other states, upon the conditions specified in this section. The term  
42 of this duty shall be for a limited period of not more than sixty (60)

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1 days. However, the executive director may renew the duty orders for  
 2 successive periods of not more than sixty (60) days if necessary for the  
 3 mobile support unit to participate in or respond to the event. Members  
 4 serving on the mobile support units are immune from discipline or  
 5 termination by the members' employers for serving in the units.

6 (b) An individual selected to serve as a member of a mobile support  
 7 unit may be unemployed, retired, self-employed, or employed:

8 (1) in any capacity, including:

- 9 (A) emergency management;
- 10 (B) fire services;
- 11 (C) emergency medical services;
- 12 (D) law enforcement;
- 13 (E) public health;
- 14 (F) medicine;
- 15 (G) public works; or
- 16 (H) mental health; and

17 (2) by any employer, including:

- 18 (A) the federal government;
- 19 (B) the state;
- 20 (C) a political subdivision; or
- 21 (D) a business or organization.

22 (c) While on duty for training, an exercise, or a response, an  
 23 individual serving as a member of a mobile support unit, whether  
 24 within or outside Indiana:

25 (1) if the individual is an employee of the state or a political  
 26 subdivision of the state, whether serving within or outside the  
 27 political subdivision, has the:

- 28 (A) powers;
- 29 (B) duties;
- 30 (C) rights;
- 31 (D) privileges; and
- 32 (E) immunities;

33 and shall receive the compensation and benefits incidental to the  
 34 individual's employment; and

35 (2) if the individual is not an employee of the state or a political  
 36 subdivision of the state, is:

37 (A) entitled to the same rights and immunities that are  
 38 provided for an employee of the state; **and**

39 (B) **notwithstanding section 15(c) of this chapter,**  
 40 **considered to be a temporary employee of the state for**  
 41 **purposes of the worker's compensation law (IC 22-3-2**  
 42 **through IC 22-3-6) and the worker's occupational diseases**

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1 **law (IC 22-3-7).**

2 An individual described in this subsection is considered an emergency  
3 management worker for purposes of section 15 of this chapter.

4 (d) If a mobile support unit is deployed outside Indiana under the  
5 emergency management assistance compact, an individual serving as  
6 a member of the mobile support unit who is not an employee of the  
7 state is considered an employee of the state for purposes of the  
8 compact.

9 (e) Personnel of mobile support units, while on duty, are subject to  
10 the operational control of the authority in charge of emergency  
11 management activities in the area in which the personnel are serving.

12 (f) The state may reimburse a political subdivision for:

13 (1) the compensation paid and actual and necessary travel,  
14 subsistence, and maintenance expenses of an employee of the  
15 political subdivision while the employee is serving as a member  
16 of a mobile support unit;

17 (2) all payments for death, disability, or injury of an employee  
18 incurred in the course of duty while the employee was serving as  
19 a member of a mobile support unit; **and**

20 (3) all losses of or damage to supplies and equipment of the  
21 political subdivision or the employee incurred while the employee  
22 was serving as a member of a mobile support unit; **and**

23 **(4) the cost of a backfill employee necessary for the political**  
24 **subdivision to fill the position and perform the duties of an**  
25 **employee deployed to a mobile support unit, but only if and to**  
26 **the extent the cost of the backfill employee represents an extra**  
27 **cost to the political subdivision.**

28 (g) For an individual of a mobile support unit who is not an  
29 employee of the state or a political subdivision, the state may:

30 (1) compensate the individual:

31 (A) at a rate of pay approved by the executive director;

32 (B) by reimbursing the individual for the actual and necessary:

33 (i) travel;

34 (ii) subsistence; and

35 (iii) maintenance;

36 expenses of the individual of the mobile support unit incurred  
37 while the individual is on duty as a member of a mobile  
38 support unit; and

39 (C) for all losses of or damage to supplies and equipment of  
40 the individual incurred while the individual is on duty as a  
41 member of a mobile support unit; or

42 (2) reimburse the individual's employer for:

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- 1 (A) the compensation paid and the actual and necessary:
- 2 (i) travel;
- 3 (ii) subsistence; and
- 4 (iii) maintenance;
- 5 expenses of the employee while the employee is on duty as a
- 6 member of a mobile support unit;
- 7 ~~(B) all payments for:~~
- 8 ~~(i) death;~~
- 9 ~~(ii) disability; or~~
- 10 ~~(iii) injury;~~
- 11 ~~of the employee while the employee was on duty as a member~~
- 12 ~~of a mobile support unit; and~~
- 13 ~~(B) all losses of or damage to supplies and equipment of~~
- 14 ~~the employer or the employee incurred in the course of duty~~
- 15 ~~while the employee was on duty as a member of a mobile~~
- 16 ~~support unit.~~

17 (h) An officer or employee of the state by virtue of employment is  
 18 subject to assignment:

- 19 (1) on a permanent basis to a mobile support unit in accordance
- 20 with the state:
- 21 (A) emergency management program; and
- 22 (B) emergency operations plan; or
- 23 (2) on a temporary basis to an emergency management activity to
- 24 meet a particular need in the event of an emergency.

25 Refusal to accept and perform the duties of an assignment constitutes  
 26 grounds for dismissal from state employment.

27 SECTION 4. IC 22-3-6-1, AS AMENDED BY P.L.168-2011,  
 28 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2013]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the  
 30 context otherwise requires:

31 (a) "Employer" includes the state and any political subdivision, any  
 32 municipal corporation within the state, any individual or the legal  
 33 representative of a deceased individual, firm, association, limited  
 34 liability company, or corporation or the receiver or trustee of the same,  
 35 using the services of another for pay. A parent corporation and its  
 36 subsidiaries shall each be considered joint employers of the  
 37 corporation's, the parent's, or the subsidiaries' employees for purposes  
 38 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of  
 39 employees shall each be considered joint employers of the employees  
 40 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and  
 41 IC 22-3-3-31. If the employer is insured, the term includes the  
 42 employer's insurer so far as applicable. However, the inclusion of an

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1 employer's insurer within this definition does not allow an employer's  
2 insurer to avoid payment for services rendered to an employee with the  
3 approval of the employer. The term also includes an employer that  
4 provides on-the-job training under the federal School to Work  
5 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in  
6 IC 22-3-2-2.5. The term does not include a nonprofit corporation that  
7 is recognized as tax exempt under Section 501(c)(3) of the Internal  
8 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the  
9 corporation enters into an independent contractor agreement with a  
10 person for the performance of youth coaching services on a part-time  
11 basis.

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

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

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

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- 1 (3) Any reference to an employee who has been injured, when the  
 2 employee is dead, also includes the employee's legal  
 3 representatives, dependents, and other persons to whom  
 4 compensation may be payable.
- 5 (4) An owner of a sole proprietorship may elect to include the  
 6 owner as an employee under IC 22-3-2 through IC 22-3-6 if the  
 7 owner is actually engaged in the proprietorship business. If the  
 8 owner makes this election, the owner must serve upon the owner's  
 9 insurance carrier and upon the board written notice of the  
 10 election. No owner of a sole proprietorship may be considered an  
 11 employee under IC 22-3-2 through IC 22-3-6 until the notice has  
 12 been received. If the owner of a sole proprietorship:
- 13 (A) is an independent contractor in the construction trades and  
 14 does not make the election provided under this subdivision,  
 15 the owner must obtain a certificate of exemption under  
 16 IC 22-3-2-14.5; or
- 17 (B) is an independent contractor and does not make the  
 18 election provided under this subdivision, the owner may obtain  
 19 a certificate of exemption under IC 22-3-2-14.5.
- 20 (5) A partner in a partnership may elect to include the partner as  
 21 an employee under IC 22-3-2 through IC 22-3-6 if the partner is  
 22 actually engaged in the partnership business. If a partner makes  
 23 this election, the partner must serve upon the partner's insurance  
 24 carrier and upon the board written notice of the election. No  
 25 partner may be considered an employee under IC 22-3-2 through  
 26 IC 22-3-6 until the notice has been received. If a partner in a  
 27 partnership:
- 28 (A) is an independent contractor in the construction trades and  
 29 does not make the election provided under this subdivision,  
 30 the partner must obtain a certificate of exemption under  
 31 IC 22-3-2-14.5; or
- 32 (B) is an independent contractor and does not make the  
 33 election provided under this subdivision, the partner may  
 34 obtain a certificate of exemption under IC 22-3-2-14.5.
- 35 (6) Real estate professionals are not employees under IC 22-3-2  
 36 through IC 22-3-6 if:
- 37 (A) they are licensed real estate agents;
- 38 (B) substantially all their remuneration is directly related to  
 39 sales volume and not the number of hours worked; and
- 40 (C) they have written agreements with real estate brokers  
 41 stating that they are not to be treated as employees for tax  
 42 purposes.

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- 1 (7) A person is an independent contractor in the construction
- 2 trades and not an employee under IC 22-3-2 through IC 22-3-6 if
- 3 the person is an independent contractor under the guidelines of
- 4 the United States Internal Revenue Service.
- 5 (8) An owner-operator that provides a motor vehicle and the
- 6 services of a driver under a written contract that is subject to
- 7 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier
- 8 is not an employee of the motor carrier for purposes of IC 22-3-2
- 9 through IC 22-3-6. The owner-operator may elect to be covered
- 10 and have the owner-operator's drivers covered under a worker's
- 11 compensation insurance policy or authorized self-insurance that
- 12 insures the motor carrier if the owner-operator pays the premiums
- 13 as requested by the motor carrier. An election by an
- 14 owner-operator under this subdivision does not terminate the
- 15 independent contractor status of the owner-operator for any
- 16 purpose other than the purpose of this subdivision.
- 17 (9) A member or manager in a limited liability company may elect
- 18 to include the member or manager as an employee under
- 19 IC 22-3-2 through IC 22-3-6 if the member or manager is actually
- 20 engaged in the limited liability company business. If a member or
- 21 manager makes this election, the member or manager must serve
- 22 upon the member's or manager's insurance carrier and upon the
- 23 board written notice of the election. A member or manager may
- 24 not be considered an employee under IC 22-3-2 through IC 22-3-6
- 25 until the notice has been received.
- 26 (10) An unpaid participant under the federal School to Work
- 27 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
- 28 extent set forth in IC 22-3-2-2.5.
- 29 (11) A person who enters into an independent contractor
- 30 agreement with a nonprofit corporation that is recognized as tax
- 31 exempt under Section 501(c)(3) of the Internal Revenue Code (as
- 32 defined in IC 6-3-1-11(a)) to perform youth coaching services on
- 33 a part-time basis is not an employee for purposes of IC 22-3-2
- 34 through IC 22-3-6.
- 35 **(12) An individual who is not an employee of the state or a**
- 36 **political subdivision is considered to be a temporary employee**
- 37 **of the state for purposes of IC 22-3-2 through IC 22-3-6 while**
- 38 **serving as a member of a mobile support unit on duty for**
- 39 **training, an exercise, or a response, as set forth in**
- 40 **IC 10-14-3-19(c)(2)(B).**
- 41 (c) "Minor" means an individual who has not reached seventeen
- 42 (17) years of age.

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1 (1) Unless otherwise provided in this subsection, a minor  
 2 employee shall be considered as being of full age for all purposes  
 3 of IC 22-3-2 through IC 22-3-6.  
 4 (2) If the employee is a minor who, at the time of the accident, is  
 5 employed, required, suffered, or permitted to work in violation of  
 6 IC 20-33-3-35, the amount of compensation and death benefits,  
 7 as provided in IC 22-3-2 through IC 22-3-6, shall be double the  
 8 amount which would otherwise be recoverable. The insurance  
 9 carrier shall be liable on its policy for one-half (1/2) of the  
 10 compensation or benefits that may be payable on account of the  
 11 injury or death of the minor, and the employer shall be liable for  
 12 the other one-half (1/2) of the compensation or benefits. If the  
 13 employee is a minor who is not less than sixteen (16) years of age  
 14 and who has not reached seventeen (17) years of age and who at  
 15 the time of the accident is employed, suffered, or permitted to  
 16 work at any occupation which is not prohibited by law, this  
 17 subdivision does not apply.  
 18 (3) A minor employee who, at the time of the accident, is a  
 19 student performing services for an employer as part of an  
 20 approved program under IC 20-37-2-7 shall be considered a  
 21 full-time employee for the purpose of computing compensation  
 22 for permanent impairment under IC 22-3-3-10. The average  
 23 weekly wages for such a student shall be calculated as provided  
 24 in subsection (d)(4).  
 25 (4) The rights and remedies granted in this subsection to a minor  
 26 under IC 22-3-2 through IC 22-3-6 on account of personal injury  
 27 or death by accident shall exclude all rights and remedies of the  
 28 minor, the minor's parents, or the minor's personal  
 29 representatives, dependents, or next of kin at common law,  
 30 statutory or otherwise, on account of the injury or death. This  
 31 subsection does not apply to minors who have reached seventeen  
 32 (17) years of age.  
 33 (d) "Average weekly wages" means the earnings of the injured  
 34 employee in the employment in which the employee was working at the  
 35 time of the injury during the period of fifty-two (52) weeks  
 36 immediately preceding the date of injury, divided by fifty-two (52),  
 37 except as follows:  
 38 (1) If the injured employee lost seven (7) or more calendar days  
 39 during this period, although not in the same week, then the  
 40 earnings for the remainder of the fifty-two (52) weeks shall be  
 41 divided by the number of weeks and parts thereof remaining after  
 42 the time lost has been deducted.

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- 1 (2) Where the employment prior to the injury extended over a  
 2 period of less than fifty-two (52) weeks, the method of dividing  
 3 the earnings during that period by the number of weeks and parts  
 4 thereof during which the employee earned wages shall be  
 5 followed, if results just and fair to both parties will be obtained.  
 6 Where by reason of the shortness of the time during which the  
 7 employee has been in the employment of the employee's employer  
 8 or of the casual nature or terms of the employment it is  
 9 impracticable to compute the average weekly wages, as defined  
 10 in this subsection, regard shall be had to the average weekly  
 11 amount which during the fifty-two (52) weeks previous to the  
 12 injury was being earned by a person in the same grade employed  
 13 at the same work by the same employer or, if there is no person so  
 14 employed, by a person in the same grade employed in the same  
 15 class of employment in the same district.
- 16 (3) Wherever allowances of any character made to an employee  
 17 in lieu of wages are a specified part of the wage contract, they  
 18 shall be deemed a part of the employee's earnings.
- 19 (4) In computing the average weekly wages to be used in  
 20 calculating an award for permanent impairment under  
 21 IC 22-3-3-10 for a student employee in an approved training  
 22 program under IC 20-37-2-7, the following formula shall be used.  
 23 Calculate the product of:  
 24 (A) the student employee's hourly wage rate; multiplied by  
 25 (B) forty (40) hours.
- 26 The result obtained is the amount of the average weekly wages for  
 27 the student employee.
- 28 (e) "Injury" and "personal injury" mean only injury by accident  
 29 arising out of and in the course of the employment and do not include  
 30 a disease in any form except as it results from the injury.
- 31 (f) "Billing review service" refers to a person or an entity that  
 32 reviews a medical service provider's bills or statements for the purpose  
 33 of determining pecuniary liability. The term includes an employer's  
 34 worker's compensation insurance carrier if the insurance carrier  
 35 performs such a review.
- 36 (g) "Billing review standard" means the data used by a billing  
 37 review service to determine pecuniary liability.
- 38 (h) "Community" means a geographic service area based on ZIP  
 39 code districts defined by the United States Postal Service according to  
 40 the following groupings:  
 41 (1) The geographic service area served by ZIP codes with the first  
 42 three (3) digits 463 and 464.

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- 1 (2) The geographic service area served by ZIP codes with the first
- 2 three (3) digits 465 and 466.
- 3 (3) The geographic service area served by ZIP codes with the first
- 4 three (3) digits 467 and 468.
- 5 (4) The geographic service area served by ZIP codes with the first
- 6 three (3) digits 469 and 479.
- 7 (5) The geographic service area served by ZIP codes with the first
- 8 three (3) digits 460, 461 (except 46107), and 473.
- 9 (6) The geographic service area served by the 46107 ZIP code and
- 10 ZIP codes with the first three (3) digits 462.
- 11 (7) The geographic service area served by ZIP codes with the first
- 12 three (3) digits 470, 471, 472, 474, and 478.
- 13 (8) The geographic service area served by ZIP codes with the first
- 14 three (3) digits 475, 476, and 477.

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

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

24 SECTION 5. IC 22-3-7-9, AS AMENDED BY P.L.6-2012,  
 25 SECTION 150, IS AMENDED TO READ AS FOLLOWS  
 26 [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) As used in this chapter,  
 27 "employer" includes the state and any political subdivision, any  
 28 municipal corporation within the state, any individual or the legal  
 29 representative of a deceased individual, firm, association, limited  
 30 liability company, or corporation or the receiver or trustee of the same,  
 31 using the services of another for pay. A parent corporation and its  
 32 subsidiaries shall each be considered joint employers of the  
 33 corporation's, the parent's, or the subsidiaries' employees for purposes  
 34 of sections 6 and 33 of this chapter. Both a lessor and a lessee of  
 35 employees shall each be considered joint employers of the employees  
 36 provided by the lessor to the lessee for purposes of sections 6 and 33  
 37 of this chapter. The term also includes an employer that provides  
 38 on-the-job training under the federal School to Work Opportunities Act  
 39 (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this  
 40 chapter. If the employer is insured, the term includes the employer's  
 41 insurer so far as applicable. However, the inclusion of an employer's  
 42 insurer within this definition does not allow an employer's insurer to

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

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

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

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

26 (A) is an independent contractor in the construction trades and  
27 does not make the election provided under this subdivision,  
28 the owner must obtain a certificate of exemption under section  
29 34.5 of this chapter; or

30 (B) is an independent contractor and does not make the  
31 election provided under this subdivision, the owner may obtain  
32 a certificate of exemption under section 34.5 of this chapter.

33 (3) A partner in a partnership may elect to include the partner as  
34 an employee under this chapter if the partner is actually engaged  
35 in the partnership business. If a partner makes this election, the  
36 partner must serve upon the partner's insurance carrier and upon  
37 the board written notice of the election. No partner may be  
38 considered an employee under this chapter until the notice has  
39 been received. If a partner in a partnership:

40 (A) is an independent contractor in the construction trades and  
41 does not make the election provided under this subdivision,  
42 the partner must obtain a certificate of exemption under

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- 1 section 34.5 of this chapter; or  
 2 (B) is an independent contractor and does not make the  
 3 election provided under this subdivision, the partner may  
 4 obtain a certificate of exemption under section 34.5 of this  
 5 chapter.  
 6 (4) Real estate professionals are not employees under this chapter  
 7 if:  
 8 (A) they are licensed real estate agents;  
 9 (B) substantially all their remuneration is directly related to  
 10 sales volume and not the number of hours worked; and  
 11 (C) they have written agreements with real estate brokers  
 12 stating that they are not to be treated as employees for tax  
 13 purposes.  
 14 (5) A person is an independent contractor in the construction  
 15 trades and not an employee under this chapter if the person is an  
 16 independent contractor under the guidelines of the United States  
 17 Internal Revenue Service.  
 18 (6) An owner-operator that provides a motor vehicle and the  
 19 services of a driver under a written contract that is subject to  
 20 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor  
 21 carrier is not an employee of the motor carrier for purposes of this  
 22 chapter. The owner-operator may elect to be covered and have the  
 23 owner-operator's drivers covered under a worker's compensation  
 24 insurance policy or authorized self-insurance that insures the  
 25 motor carrier if the owner-operator pays the premiums as  
 26 requested by the motor carrier. An election by an owner-operator  
 27 under this subdivision does not terminate the independent  
 28 contractor status of the owner-operator for any purpose other than  
 29 the purpose of this subdivision.  
 30 (7) An unpaid participant under the federal School to Work  
 31 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the  
 32 extent set forth under section 2.5 of this chapter.  
 33 (8) A person who enters into an independent contractor agreement  
 34 with a nonprofit corporation that is recognized as tax exempt  
 35 under Section 501(c)(3) of the Internal Revenue Code (as defined  
 36 in IC 6-3-1-11(a)) to perform youth coaching services on a  
 37 part-time basis is not an employee for purposes of this chapter.  
 38 (9) An officer of a corporation who is the sole officer of the  
 39 corporation is an employee of the corporation under this chapter.  
 40 An officer of a corporation who is the sole officer of the  
 41 corporation may elect not to be an employee of the corporation  
 42 under this chapter. If an officer makes this election, the officer

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1 must serve written notice of the election on the corporation's  
2 insurance carrier and the board. An officer of a corporation who  
3 is the sole officer of the corporation may not be considered to be  
4 excluded as an employee under this chapter until the notice is  
5 received by the insurance carrier and the board.

6 **(10) An individual who is not an employee of the state or a**  
7 **political subdivision is considered to be a temporary employee**  
8 **of the state for purposes of this chapter while serving as a**  
9 **member of a mobile support unit on duty for training, an**  
10 **exercise, or a response, as set forth in IC 10-14-3-19(c)(2)(B).**

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

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

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

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

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

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

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

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

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

40 (g) For the purposes of this chapter, no compensation shall be  
 41 payable for or on account of death resulting from any occupational  
 42 disease unless death occurs within two (2) years after the date of

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1 disablement. However, this subsection does not bar compensation for  
2 death:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (l) As used in this chapter, "pecuniary liability" means the  
42 responsibility of an employer or the employer's insurance carrier for the

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1 payment of the charges for each specific service or product for human  
2 medical treatment provided under this chapter in a defined community,  
3 equal to or less than the charges made by medical service providers at  
4 the eightieth percentile in the same community for like services or  
5 products.

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