

HOUSE BILL No. 1409

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3.

Synopsis: Worker's compensation statutes of limitations. Provides that: (1) a claim for worker's compensation for an injury or disablement through employment must be filed within two years from the date that the employee had knowledge of, or should have known of the existence of, the injury or disablement, with certain conditions; (2) an employee injured in the course of employment or who has become disabled by reason of an occupational disease through employment must institute legal proceedings within two years from the date that the employee had knowledge of, or should have known of the existence of, the injury or disablement, with certain conditions, against a person other than the employer that has a legal liability to pay damages; and (3) an action may not be brought by an individual not subject to the worker's compensation act who suffers an injury while in the employ of another person unless the action is commenced within two years from the date on which the employee had knowledge of the nature of an injury or, by exercise of reasonable diligence, should have known of the existence of the injury and the causal relationship of the injury to the employment of the employee. Makes technical corrections.

Effective: July 1, 2013.

McNamara

January 22, 2013, read first time and referred to Committee on Employment, Labor and Pensions.

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Introduced

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. 1409



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

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

1 SECTION 1. IC 22-3-2-13 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. **(a)** Whenever an
 3 injury or death for which compensation is payable under ~~chapters 2~~
 4 ~~through 6 of this article~~ **IC 22-3-2 through IC 22-3-6** shall have been
 5 sustained under circumstances creating in some other person than the
 6 employer and not in the same employ a legal liability to pay damages
 7 in respect thereto, the injured employee, or ~~his~~ **the dependents of the**
 8 **employee**, in case of death, may commence legal proceedings against
 9 the other person to recover damages notwithstanding the employer's or
 10 the employer's compensation insurance carrier's payment of or liability
 11 to pay compensation under ~~chapters 2 through 6 of this article.~~
 12 **IC 22-3-2 through IC 22-3-6.** In that case, however, if the action
 13 against the other person is brought by the injured employee or ~~his~~ **the**
 14 **dependents of the employee** and judgment is obtained and paid, and
 15 accepted, or settlement is made with the other person, either with or
 16 without suit, then from the amount received by the employee or
 17 dependents there shall be paid to the employer or the employer's



1 compensation insurance carrier, subject to ~~its~~ **the employer or**
 2 **insurance carrier** paying its pro rata share of the reasonable and
 3 necessary costs and expenses of asserting the third party claim, the
 4 amount of compensation paid to the employee or dependents, plus the
 5 medical, surgical, hospital, and nurses' services and supplies and burial
 6 expenses paid by the employer or the employer's compensation
 7 insurance carrier and the liability of the employer or the employer's
 8 compensation insurance carrier to pay further compensation or other
 9 expenses shall ~~thereupon then~~ terminate, whether or not one (1) or all
 10 of the dependents are entitled to share in the proceeds of the settlement
 11 or recovery and whether or not one (1) or all of the dependents could
 12 have maintained the action or claim for wrongful death.

13 **(b)** In the event the injured employee or ~~his~~ **the dependents of the**
 14 **employee**, not having received compensation or medical, surgical,
 15 hospital, or nurses' services and supplies or death benefits from the
 16 employer or the employer's compensation insurance carrier, shall
 17 procure a judgment against the other party for injury or death, which
 18 judgment is paid, or if settlement is made with the other person either
 19 with or without suit, then the employer or the employer's compensation
 20 insurance carrier shall have no liability for payment of compensation
 21 or for payment of medical, surgical, hospital, or nurses' services and
 22 supplies or death benefits whatsoever, whether or not one (1) or all of
 23 the dependents are entitled to share in the proceeds of settlement or
 24 recovery and whether or not one (1) or all of the dependents could have
 25 maintained the action or claim for wrongful death.

26 **(c)** In the event any injured employee, or in the event of ~~his~~ **the**
 27 **death his of the employee, the dependents of the employee**, shall
 28 procure a final judgment against the other person other than by
 29 agreement, and the judgment is for a lesser sum than the amount for
 30 which the employer or the employer's compensation insurance carrier
 31 is liable for compensation and for medical, surgical, hospital, and
 32 nurses' services and supplies, as of the date the judgment becomes
 33 final, then the employee, or in the event of ~~his~~ **the death his of the**
 34 **employee, the dependents of the employee**, shall have the option of
 35 either collecting the judgment and repaying the employer or the
 36 employer's compensation insurance carrier for compensation previously
 37 drawn, if any, and repaying the employer or the employer's
 38 compensation insurance carrier for medical, surgical, hospital, and
 39 nurses' services and supplies previously paid, if any, and of repaying
 40 the employer or the employer's compensation insurance carrier the
 41 burial benefits paid, if any, or of assigning all rights under the
 42 judgment to the employer or the employer's compensation insurance

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1 carrier and thereafter receiving all compensation and medical, surgical,
 2 hospital, and nurses' services and supplies to which the employee, or
 3 in the event of ~~his~~ **the death of the employee, the**
 4 dependents **of the employee**, would be entitled if there had been no
 5 action brought against the other party.

6 **(d)** If the injured employee or ~~his~~ **the dependents of the employee**
 7 shall agree to receive compensation from the employer or the
 8 employer's compensation insurance carrier or to accept from the
 9 employer or the employer's compensation insurance carrier, by loan or
 10 otherwise, any payment on account of the compensation, or institute
 11 proceedings to recover the same, the employer or the employer's
 12 compensation insurance carrier shall have a lien upon any settlement
 13 award, judgment, or fund out of which the employee might be
 14 compensated from the third party.

15 **(e) This subsection does not apply after June 30, 2013.** The
 16 employee, or in the event of ~~his~~ **the death of the employee, the**
 17 dependents **of the employee**, shall institute legal proceedings against
 18 the other person for damages within two (2) years after the cause of
 19 action accrues. If, after the proceeding is commenced, it is dismissed,
 20 the employer or the employer's compensation insurance carrier, having
 21 paid compensation or having become liable therefor, may collect in
 22 their own name, or in the name of the injured employee, or, in case of
 23 death **of the employee**, in the name of ~~his~~ **the dependents of the**
 24 **employee**, from the other person in whom legal liability for damages
 25 exists, the compensation paid or payable to the injured employee, or ~~his~~
 26 **the dependents of the employee**, plus medical, surgical, hospital, and
 27 nurses' services and supplies, and burial expenses paid by the employer
 28 or the employer's compensation insurance carrier or for which they
 29 have become liable. The employer or the employer's compensation
 30 insurance carrier may commence an action at law for collection against
 31 the other person in whom legal liability for damages exists, not later
 32 than one (1) year from the date the action so commenced has been
 33 dismissed, notwithstanding the provisions of any statute of limitations
 34 to the contrary.

35 **(f) This subsection does not apply after June 30, 2013.** If the
 36 employee, or, in the event of ~~his~~ **the death of the employee, the**
 37 dependents **of the employee**, shall fail to institute legal proceedings
 38 against the other person for damages within two (2) years after the
 39 cause of action accrues, the employer or the employer's compensation
 40 insurance carrier, having paid compensation, or having been liable
 41 therefor, may collect in their own name or in the name of the injured
 42 employee, or in the case of ~~his~~ **the death of the employee**, in the name

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1 of ~~his~~ **the dependents of the employee**, from the other person in whom
 2 legal liability for damage exists, the compensation paid or payable to
 3 the injured employee, or to ~~his~~ **the dependents**, plus the medical,
 4 surgical, hospital, and nurses' services and supplies, and burial
 5 expenses, paid by ~~them~~; **the employer or the employer's**
 6 **compensation insurance carrier**, or for which they have become
 7 liable, and the employer or the employer's compensation insurance
 8 carrier may commence an action at law for collection against the other
 9 person in whom legal liability exists, at any time within one (1) year
 10 from the date of the expiration of the two (2) years when the action
 11 accrued to the injured employee, or, in the event of ~~his~~ **the death of the**
 12 **employee**, to ~~his~~ **the dependents of the employee**, notwithstanding the
 13 provisions of any statute of limitations to the contrary.

14 **(g) This subsection applies after June 30, 2013. An employee, or**
 15 **in the event of the death of the employee, the dependents of the**
 16 **employee, must institute legal proceedings against the other person**
 17 **described in subsection (a) for damages:**

18 **(1) not later than two (2) years after the date on which the**
 19 **employee:**

20 **(A) had knowledge of; or**

21 **(B) by exercise of reasonable diligence, should have known**
 22 **of;**

23 **the existence of an injury and the causal relationship of the**
 24 **injury to the employment of the employee; or**

25 **(2) if death results from an injury with a causal relationship**
 26 **to the employment of the employee, not later than two (2)**
 27 **years after the death.**

28 **If, after the proceeding is commenced, it is dismissed, or if the**
 29 **employee fails, or, in the event of the death of the employee, the**
 30 **dependents of the employee fail, to institute legal proceedings**
 31 **against the other person for damages, the employer or the**
 32 **employer's compensation insurance carrier, having paid or being**
 33 **liable to pay compensation, may collect in their own name or in the**
 34 **name of the injured employee, or in the name of the dependents of**
 35 **a deceased employee, the compensation paid or payable to the**
 36 **injured employee or to the dependents from the other person in**
 37 **whom legal liability for damage exists. In addition to any**
 38 **compensation paid or payable, the employer or the employer's**
 39 **compensation insurance carrier may recover the medical, surgical,**
 40 **hospital, nurses' services and supplies, and burial expenses, paid by**
 41 **them or for which the employer or the insurance carrier of the**
 42 **employee have become liable. Notwithstanding the provisions of**

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1 **any statute of limitations to the contrary, the employer or the**
 2 **employer's compensation insurance carrier may commence legal**
 3 **proceedings for collection against the other person in whom legal**
 4 **liability exists at any time not later than one (1) year after the date**
 5 **of the expiration of the period when the action accrued to the**
 6 **injured employee or to the dependents of a deceased employee.**

7 **(h)** In actions brought by the employee or ~~his~~ **the dependents of the**
 8 **employee, he or they those individuals** shall, within thirty (30) days
 9 after the action is filed, notify the employer or the employer's
 10 compensation insurance carrier by personal service or registered mail,
 11 of the action and the name of the court in which such suit is brought,
 12 filing proof thereof in the action.

13 **(i)** The employer or the employer's compensation insurance carrier
 14 shall pay its pro rata share of all costs and reasonably necessary
 15 expenses in connection with asserting the third party claim, action, or
 16 suit, including but not limited to cost of depositions and witness fees,
 17 and to the attorney at law selected by the employee or ~~his~~ **the**
 18 **dependents of the employee, a fee of twenty-five per cent percent**
 19 **(25%), if collected without suit, of the amount of benefits actually**
 20 **repaid after the expenses and costs in connection with the third party**
 21 **claim have been deducted therefrom, and a fee of thirty-three and**
 22 **one-third per cent percent (33 1/3%), if collected with suit, of the**
 23 **amount of benefits actually repaid after deduction of costs and**
 24 **reasonably necessary expenses in connection with the third party claim**
 25 **action or suit. The employer may, within ninety (90) days after receipt**
 26 **of notice of suit from the employee or his the dependents of the**
 27 **employee, join in the action upon his a motion of the employee so that**
 28 **all orders of court after hearing and judgment shall be made for his the**
 29 **protection of the employee. An employer or his the compensation**
 30 **insurance carrier of the employer may waive its right to**
 31 **reimbursement under this section and, as a result of the waiver, not**
 32 **have to pay the pro rata share of costs and expenses.**

33 **(j)** No release or settlement of claim for damages by reason of injury
 34 or death, and no satisfaction of judgment in the proceedings, shall be
 35 valid without the written consent of both **the** employer or the
 36 employer's compensation insurance carrier and **the** employee or ~~his~~ **the**
 37 **dependents of the employee, except in the case of the employer or the**
 38 **employer's compensation insurance carrier, consent shall not be**
 39 **required where the employer or the employer's compensation insurance**
 40 **carrier has been fully indemnified or protected by court order.**

41 SECTION 2. IC 22-3-3-3 IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2013]: Sec. 3. **(a) This subsection does not**

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1 **apply after June 30, 2013.** The right to compensation under IC 22-3-2
 2 through IC 22-3-6 shall be forever barred unless within two (2) years
 3 after the occurrence of the accident, or if death results therefrom,
 4 within two (2) years after such death, a claim for compensation
 5 thereunder shall be filed with the worker's compensation board.
 6 However, in all cases wherein an accident or death results from the
 7 exposure to radiation, a claim for compensation shall be filed with the
 8 board within two (2) years from the date on which the employee had
 9 knowledge of ~~his~~ **an** injury or by exercise of reasonable diligence
 10 should have known of the existence of such injury and ~~its~~ **the** causal
 11 relationship **of the injury to his the** employment **of the employee.**

12 **(b) This subsection applies after June 30, 2013. The right to**
 13 **compensation under IC 22-3-2 through IC 22-3-6 is forever barred**
 14 **unless:**

15 **(1) not later than two (2) years after the date on which the**
 16 **employee:**

17 **(A) had knowledge of; or**

18 **(B) by exercise of reasonable diligence, should have known**
 19 **of the existence of;**

20 **an injury and the causal relationship of the injury to the**
 21 **employment of the employee; or**

22 **(2) if death results from an injury with a causal relationship**
 23 **to the employment of the employee, not later than two (2)**
 24 **years after the death;**

25 **a claim for compensation for the injury or the death is filed with**
 26 **the worker's compensation board. However, in all cases in which**
 27 **an accident or death results from an exposure to radiation, a claim**
 28 **for compensation must be filed with the board not later than two**
 29 **(2) years after the date on which the employee had knowledge of,**
 30 **or by exercise of reasonable diligence should have known of the**
 31 **existence of, the injury and the causal relationship of the injury to**
 32 **the employment of the employee.**

33 SECTION 3. IC 22-3-7-9, AS AMENDED BY P.L.6-2012,
 34 SECTION 150, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) As used in this chapter,
 36 "employer" includes the state and any political subdivision, any
 37 municipal corporation within the state, any individual or the legal
 38 representative of a deceased individual, firm, association, limited
 39 liability company, or corporation or the receiver or trustee of the same,
 40 using the services of another for pay. A parent corporation and its
 41 subsidiaries shall each be considered joint employers of the
 42 corporation's, the parent's, or the subsidiaries' employees for purposes

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1 of sections 6 and 33 of this chapter. Both a lessor and a lessee of
 2 employees shall each be considered joint employers of the employees
 3 provided by the lessor to the lessee for purposes of sections 6 and 33
 4 of this chapter. The term also includes an employer that provides
 5 on-the-job training under the federal School to Work Opportunities Act
 6 (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this
 7 chapter. If the employer is insured, the term includes the employer's
 8 insurer so far as applicable. However, the inclusion of an employer's
 9 insurer within this definition does not allow an employer's insurer to
 10 avoid payment for services rendered to an employee with the approval
 11 of the employer. The term does not include a nonprofit corporation that
 12 is recognized as tax exempt under Section 501(c)(3) of the Internal
 13 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the
 14 corporation enters into an independent contractor agreement with a
 15 person for the performance of youth coaching services on a part-time
 16 basis.

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

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

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

35 (A) is an independent contractor in the construction trades and
 36 does not make the election provided under this subdivision,
 37 the owner must obtain a certificate of exemption under section
 38 34.5 of this chapter; or

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

42 (3) A partner in a partnership may elect to include the partner as

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1 an employee under this chapter if the partner is actually engaged
 2 in the partnership business. If a partner makes this election, the
 3 partner must serve upon the partner's insurance carrier and upon
 4 the board written notice of the election. No partner may be
 5 considered an employee under this chapter until the notice has
 6 been received. If a partner in a partnership:

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

11 (B) is an independent contractor and does not make the
 12 election provided under this subdivision, the partner may
 13 obtain a certificate of exemption under section 34.5 of this
 14 chapter.

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

17 (A) they are licensed real estate agents;

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

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

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

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

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

42 (8) A person who enters into an independent contractor agreement

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1 with a nonprofit corporation that is recognized as tax exempt
 2 under Section 501(c)(3) of the Internal Revenue Code (as defined
 3 in IC 6-3-1-11(a)) to perform youth coaching services on a
 4 part-time basis is not an employee for purposes of this chapter.
 5 (9) An officer of a corporation who is the sole officer of the
 6 corporation is an employee of the corporation under this chapter.
 7 An officer of a corporation who is the sole officer of the
 8 corporation may elect not to be an employee of the corporation
 9 under this chapter. If an officer makes this election, the officer
 10 must serve written notice of the election on the corporation's
 11 insurance carrier and the board. An officer of a corporation who
 12 is the sole officer of the corporation may not be considered to be
 13 excluded as an employee under this chapter until the notice is
 14 received by the insurance carrier and the board.

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

37 (d) This chapter does not apply to casual laborers as defined in
 38 subsection (b), nor to farm or agricultural employees, nor to household
 39 employees, nor to railroad employees engaged in train service as
 40 engineers, firemen, conductors, brakemen, flagmen, baggagemen, or
 41 foremen in charge of yard engines and helpers assigned thereto, nor to
 42 their employers with respect to these employees. Also, this chapter

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1 does not apply to employees or their employers with respect to
2 employments in which the laws of the United States provide for
3 compensation or liability for injury to the health, disability, or death by
4 reason of diseases suffered by these employees.

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

11 (f) **This subsection does not apply after June 30, 2013.** For the
12 purposes of this chapter, no compensation shall be payable for or on
13 account of any occupational diseases unless disablement, as defined in
14 subsection (e), occurs within two (2) years after the last day of the last
15 exposure to the hazards of the disease except for the following:

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

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

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

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

39 (5) In all cases of occupational disease caused by the inhalation
40 of asbestos dust in which the last date of the last exposure occurs
41 on or after July 1, 1988, no compensation shall be payable unless
42 disablement (as defined in subsection (e)) occurs within

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thirty-five (35) years after the last day of the last exposure.

(g) This subsection applies after June 30, 2013. 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 not later than two (2) years after 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 the disease and its causal relationship to the employee's employment, 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 not later than three (3) years after the last day of the last exposure to the hazards of the disease.

(2) 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 not later than thirty-five (35) years after the last day of the last exposure.

~~(g)~~ **(h) This subsection does not apply after June 30, 2013. 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.

(i) This subsection applies after June 30, 2013. 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 not later than two (2) years after 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 the disease and its causal

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1 relationship to the employee's employment after the date of
2 disablement. However, this subsection does not bar compensation
3 for death:

- 4 (1) where death occurs during the pendency of a claim filed by
- 5 an employee not later than two (2) years after the date on
- 6 which the employee had knowledge of the nature of the
- 7 employee's occupational disease or, by exercise of reasonable
- 8 diligence, should have known of the existence of the disease
- 9 and its causal relationship to the employee's employment; or
- 10 (2) where, by agreement filed or decision rendered, a
- 11 compensable period of disability has been fixed and death
- 12 occurs not later than two (2) years after the end of such fixed
- 13 period, but in no event later than three hundred (300) weeks
- 14 after the date of disablement.

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

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

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

- 25 (1) The geographic service area served by ZIP codes with the first
- 26 three (3) digits 463 and 464.
- 27 (2) The geographic service area served by ZIP codes with the first
- 28 three (3) digits 465 and 466.
- 29 (3) The geographic service area served by ZIP codes with the first
- 30 three (3) digits 467 and 468.
- 31 (4) The geographic service area served by ZIP codes with the first
- 32 three (3) digits 469 and 479.
- 33 (5) The geographic service area served by ZIP codes with the first
- 34 three (3) digits 460, 461 (except 46107), and 473.
- 35 (6) The geographic service area served by the 46107 ZIP code and
- 36 ZIP codes with the first three (3) digits 462.
- 37 (7) The geographic service area served by ZIP codes with the first
- 38 three (3) digits 470, 471, 472, 474, and 478.
- 39 (8) The geographic service area served by ZIP codes with the first
- 40 three (3) digits 475, 476, and 477.

41 (†) (m) As used in this chapter, "medical service provider" refers to
42 a person or an entity that provides medical services, treatment, or

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supplies to an employee under this chapter.

(†) (n) 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 4. IC 22-3-7-32, AS AMENDED BY P.L.99-2007, SECTION 184, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 32. (a) No proceedings for compensation under this chapter shall be maintained unless notice has been given to the employer of disablement arising from an occupational disease as soon as practicable after the date of disablement. No defect or inaccuracy of such notices shall be a bar to compensation unless the employer proves that ~~he~~ **the employer** is unduly prejudiced in such proceedings by such defect or inaccuracy.

(b) The notice provided for in subsection (a) shall state the name and address of the employee and the nature and cause of the occupational disease and disablement or death therefrom, and shall be signed by the employee with a disability or by someone in the employee's behalf, or by one (1) or more of the dependents, in case of death, or by some person in their behalf. Such notice may be served personally upon the employer or upon any foreman, superintendent, or manager of the employer to whose orders the employee with a disability or deceased employee was required to conform or upon any agent of the employer upon whom a summons in a civil action may be served under the laws of the state or may be sent to the employer by registered letter, addressed to the employer's last known residence or place of business.

(c) **This subsection does not apply after June 30, 2013.** No proceedings by an employee for compensation under this chapter shall be maintained unless claim for compensation shall be filed by the employee with the worker's compensation board within two (2) years after the date of the disablement.

(d) **This subsection does not apply after June 30, 2013.** No proceedings by dependents of a deceased employee for compensation for death under this chapter shall be maintained unless claim for compensation shall be filed by the dependents with the worker's compensation board within two (2) years after the date of death.

(e) No limitation of time provided in this chapter shall run against any person who is mentally incompetent or a minor dependent, so long

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1 as the person has no guardian or trustee.

2 **(f) This subsection applies after June 30, 2013. No proceedings**
3 **for compensation under this chapter by an employee or surviving**
4 **dependents of the employee may be maintained unless:**

5 **(1) not later than two (2) years after the date on which the**
6 **employee:**

7 **(A) had knowledge of a disablement from an occupational**
8 **disease; or**

9 **(B) by exercise of reasonable diligence should have known**
10 **of the existence of a disablement from an occupational**
11 **disease; or**

12 **(2) if death results from disablement from an occupational**
13 **disease, within two (2) years after the death;**

14 **a claim for compensation for the occupational disease or the death**
15 **is filed with the worker's compensation board.**

16 SECTION 5. IC 22-3-7-36, AS AMENDED BY P.L.99-2007,
17 SECTION 185, IS AMENDED TO READ AS FOLLOWS
18 [EFFECTIVE JULY 1, 2013]: Sec. 36. (a) Whenever disablement or
19 death from an occupational disease arising out of and in the course of
20 the employment for which compensation is payable under this chapter,
21 shall have been sustained under circumstances creating in some other
22 person than the employer and not in the same employ a legal liability
23 to pay damages in respect thereto, the injured employee, or the
24 employee's dependents, in case of death, may commence legal
25 proceedings against such other person to recover damages
26 notwithstanding such employer's or such employer's occupational
27 disease insurance carrier's payment of, or liability to pay, compensation
28 under this chapter. In such case, however, if the action against such
29 other person is brought by the injured employee or the employee's
30 dependents and judgment is obtained and paid and accepted and
31 settlement is made with such other person, either with or without suit,
32 then from the amount received by such employee or dependents there
33 shall be paid to the employer, or such employer's occupational disease
34 insurance carrier, the amount of compensation paid to such employee
35 or dependents, plus the medical, hospital, and nurses' services and
36 supplies and burial expense paid by the employer or such employer's
37 occupational disease insurance carrier, and the liability of the employer
38 or such employer's occupational disease insurance carrier to pay further
39 compensation or other expenses shall thereupon terminate, whether or
40 not one (1) or all of the dependents are entitled to share in the proceeds
41 of the settlement or recovery and whether or not one (1) or all of the
42 dependents could have maintained the action or claim for wrongful

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1 death.
2 (b) In the event such employee or the employee's dependents, not
3 having received compensation or medical, surgical, hospital, or nurse's
4 services and supplies or death benefits, or such employer's occupational
5 disease insurance carrier, shall procure a judgment against such other
6 party for disablement or death from an occupational disease arising out
7 of and in the course of the employment, which judgment is paid, or if
8 settlement is made with such other person, either with or without suit,
9 then the employer or such employer's occupational disease insurance
10 carrier shall have no liability for payment of compensation or for
11 payment of medical, surgical, hospital, or nurse's services and supplies
12 or death benefits whatsoever, whether or not one (1) or all of the
13 dependents are entitled to share in the proceeds of settlement or
14 recovery and whether or not one (1) or all of the dependents could have
15 maintained the action or claim for wrongful death.

16 (c) In the event an employee, or in the event of the employee's death,
17 the employee's dependents, shall procure a final judgment against such
18 other person other than by agreement, for disablement or death from an
19 occupational disease arising out of and in the course of the employment
20 and such judgment is for a lesser sum than the amount for which the
21 employer or such employer's occupational disease insurance carrier is
22 liable for compensation and for medical, surgical, hospital, and nurse's
23 services and supplies, as of the date the judgment becomes final, then
24 the employee, or in the event of the employee's death, the employee's
25 dependents, shall have the option of either collecting such judgment
26 and repaying the employer or such employer's occupational disease
27 insurance carrier for compensation previously drawn, if any, and
28 repaying the employer or such employer's occupational disease
29 insurance carrier for medical, surgical, hospital, and nurse's services
30 and supplies previously paid, if any, and of repaying the employer or
31 such employer's occupational disease insurance carrier, the burial
32 benefits paid, if any, or of assigning all rights under said judgment to
33 the employer or such employer's occupational disease insurance carrier
34 and thereafter receiving all compensation and medical, surgical,
35 hospital, and nurse's services and supplies to which the employee, or
36 in the event of the employee's death, to which the employee's
37 dependents would be entitled if there had been no action brought
38 against such other party.

39 (d) If the employee or the employee's dependents agree to receive
40 compensation, because of an occupational disease arising out of and in
41 the course of the employment, from the employer or such employer's
42 occupational disease insurance carrier, or to accept from the employer

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1 or such employer's occupational disease insurance carrier by loan or
2 otherwise, any payment on account of such compensation or institute
3 proceedings to recover the same, the said employer or such employer's
4 occupational disease insurance carrier shall have a lien upon any
5 settlement award, judgment, or fund out of which such employee might
6 be compensated from the third party.

7 (e) **This subsection does not apply after June 30, 2013.** The
8 employee, or in the event of the employee's death, the employee's
9 dependents, shall institute legal proceedings against such other person
10 for damages within two (2) years after said cause of action accrues. If,
11 after said proceeding is commenced, the same is dismissed, the
12 employer or such employer's occupational disease insurance carrier,
13 having paid compensation or having become liable therefor, may
14 collect in their own name or in the name of the employee with a
15 disability, or in the case of death, in the name of the employee's
16 dependents, from the other person in whom legal liability for damages
17 exists, the compensation paid or payable to the employee with a
18 disability, or the employee's dependents, plus such medical, surgical,
19 hospital, and nurse's services and supplies and burial expense paid by
20 the employer or such employer's occupational disease insurance carrier
21 for which they have become liable. The employer or such employer's
22 occupational disease insurance carrier may commence such action at
23 law for such collection against the other person in whom legal liability
24 for damages exists, not later than one (1) year from the date said action
25 so commenced, has been dismissed, notwithstanding the provisions of
26 any statute of limitations to the contrary.

27 (f) **This subsection does not apply after June 30, 2013.** If said
28 employee, or in the event of the employee's death, the employee's
29 dependents, shall fail to institute legal proceedings against such other
30 person for damages within two (2) years after said cause of action
31 accrues, the employer or such employer's occupational disease
32 insurance carrier, having paid compensation or having been liable
33 therefor, may collect in their own name or in the name of the employee
34 with a disability, or in the case of the employee's death, in the name of
35 the employee's dependents, from the other person in whom legal
36 liability for damage exists, the compensation paid or payable to the
37 employee with a disability or to the employee's dependents, plus the
38 medical, surgical, hospital, and nurse's services and supplies and burial
39 expenses, paid by them or for which they have become liable, and the
40 employer or such employer's occupational disease insurance carrier
41 may commence such action at law for such collection against such
42 other person in whom legal liability exists at any time within one (1)

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1 year from the date of the expiration of the two (2) years when the action
2 accrued to the employee with a disability or, in the event of the
3 employee's death, to the employee's dependents, notwithstanding the
4 provisions of any statute of limitations to the contrary.

5 **(g) This subsection applies after June 30, 2013. The employee,**
6 **or in the event of the employee's death, the employee's dependents,**
7 **must institute legal proceedings against another person for**
8 **damages not later than two (2) years after the date on which the**
9 **employee had knowledge of a disablement from an occupational**
10 **disease arising out of and in the course of the employment or, by**
11 **exercise of reasonable diligence, should have known of the**
12 **existence and the causal relationship of a disablement from an**
13 **occupational disease arising out of and in the course of the**
14 **employment. If the proceeding is dismissed after commencement,**
15 **the employer or the employer's occupational disease insurance**
16 **carrier that has paid compensation or is liable to pay compensation**
17 **may collect in their own name, in the name of the employee with a**
18 **disability, or, in the case of death, in the name of the employee's**
19 **dependents, from the other person in whom legal liability for**
20 **damages exists:**

- 21 (1) the compensation paid or payable to the employee with a
22 disability or the employee's dependents; and
- 23 (2) the medical, surgical, hospital, nurses' services and
24 supplies, and burial expense paid by the employer or the
25 employer's occupational disease insurance carrier.

26 Notwithstanding any statute of limitations to the contrary, the
27 employer or the employer's occupational disease insurance carrier
28 may commence an action at law for collection against another
29 person in whom legal liability for damages exists not later than one
30 (1) year after the date the action that was commenced has been
31 dismissed.

32 **(h) This subsection applies after June 30, 2013. If the employee,**
33 **or in the event of the employee's death, the employee's dependents,**
34 **have failed to institute legal proceedings against another person for**
35 **damages within the two (2) year period set forth in subsection (g),**
36 **the employer or the employer's occupational disease insurance**
37 **carrier, having paid compensation or being liable to pay**
38 **compensation, may collect in their own name, in the name of the**
39 **employee with a disability, or, in the case of the employee's death,**
40 **in the name of the employee's dependents, from the other person**
41 **in whom legal liability for damage exists:**

- 42 (1) the compensation paid or payable to the employee with a

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1 **disability or to the employee's dependents; and**
 2 **(2) the medical, surgical, hospital, nurses' services and**
 3 **supplies, and burial expenses, paid by them or for which they**
 4 **have become liable.**

5 **Notwithstanding any statute of limitations to the contrary, the**
 6 **employer or the employer's occupational disease insurance carrier**
 7 **may commence an action at law for collection against another**
 8 **person in whom legal liability exists not later than one (1) year**
 9 **after the date of the expiration of the two (2) year period set forth**
 10 **in subsection (g) when the action accrued to the employee with a**
 11 **disability or, in the event of the employee's death, to the employee's**
 12 **dependents.**

13 ~~(g)~~ **(i)** In such actions brought as provided in this section by the
 14 employee or the employee's dependents, the employee or the
 15 employee's dependents shall, within thirty (30) days after such action
 16 is filed, notify the employer or such employer's occupational disease
 17 insurance carrier, by personal service or registered or certified mail, of
 18 such fact and the name of the court in which suit is brought, filing
 19 proof thereof in such action.

20 ~~(h)~~ **(j)** If the employer does not join in the action within ninety (90)
 21 days after receipt of the notice, then out of any actual money
 22 reimbursement received by the employer or such employer's
 23 occupational disease insurance carrier pursuant to this section, they
 24 shall pay their pro rata share of all costs and reasonably necessary
 25 expenses in connection with such third party claim, action, or suit, and
 26 to the attorney at law selected by the employee or the employee's
 27 dependents, a fee of twenty-five percent (25%), if collected without
 28 trial, of the amount of benefits after the expenses and costs in
 29 connection with such third party claim have been deducted therefrom,
 30 and a fee of thirty-three and one-third percent (33 1/3%), if collected
 31 after trial, of the amount of such benefits after deduction of the costs
 32 and reasonably necessary expenses in connection with such third party
 33 claim, action, or suit. The employer may, within ninety (90) days after
 34 receipt of notice of suit from the employee or the employee's
 35 dependents, join in the action upon the employee's motion so that all
 36 orders of court after hearing and judgment shall be made for the
 37 employee's protection.

38 ~~(i)~~ **(k)** No release or settlement of claim for damages by reason of
 39 such injury or death, and no satisfaction of judgment in such
 40 proceedings shall be valid without the written consent of both employer
 41 or such employer's occupational disease insurance carrier, and
 42 employee, or the employee's dependents. However, in the case of the

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1 employer or such employer's occupational disease insurance carrier,
2 such consent shall not be required where the employer or such
3 employer's occupational disease insurance carrier has been fully
4 indemnified or protected by court order.

5 SECTION 6. IC 22-3-9-8 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a) This subsection does not**
7 **apply after June 30, 2013.** No action shall be maintained under this
8 chapter unless the same is commenced within two (2) years from the
9 date the cause of action accrued.

10 **(b) This subsection applies after June 30, 2013. No action shall**
11 **be maintained under this chapter unless the action is commenced:**

12 **(1) not later than two (2) years after the date on which the**
13 **employee:**

14 **(A) had knowledge of the nature of the employee's injury;**
15 **or**

16 **(B) by exercise of reasonable diligence should have known**
17 **of the existence of the employee's injury and the causal**
18 **relationship of the injury to the employment of the**
19 **employee; or**

20 **(2) if death results from an injury with a causal relationship**
21 **to the employment of the employee, not later than two (2)**
22 **years after the death.**

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