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# HOUSE BILL No. 1313

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-3; IC 22-4.

**Synopsis:** Worker's and unemployment compensation. Establishes the second injury fund for occupational diseases. Provides for 10% interest from the date of filing an application for an adjustment of claim concerning the payment of workers' compensation. Provides that an employee who: (1) has an injury or occupational disease that results in a temporary total disability or a temporary partial impairment; and (2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's injury or occupational disease may receive compensation for the difference in average weekly earnings lost. Limits disabled from trade compensation to 52 consecutive weeks or 78 aggregate weeks and establishes a cap of \$762 per week. Reduces worker's compensation due by 20% for certain acts or the failure to act by the employee (instead of denying compensation altogether). Provides that unemployment benefits retroactive to the date of the beginning of a strike subject to the maximum benefit periods due may be paid to a striking individual when the employer shuts down operations. Permits retroactive application for unemployment benefits based on seasonal employment in this circumstance. Provides that certain strike related benefits are not considered remuneration for purposes of computing deductible income. Makes conforming amendments.

**Effective:** July 1, 2002.

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## Liggett

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January 15, 2002, read first time and referred to Committee on Labor and Employment.

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Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

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# HOUSE BILL No. 1313



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

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

1 SECTION 1. IC 22-3-2-8 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2002]: Sec. 8. ~~No~~ **The monetary** compensation  
3 ~~is allowed~~ **under IC 22-3-3-8, IC 22-3-3-9, and IC 22-3-3-10** for an  
4 injury or death **shall be reduced by twenty percent (20%)** due to the  
5 employee's:

- 6 (1) ~~knowingly~~ **willfully** self-inflicted injury;
- 7 (2) ~~his~~ intoxication;
- 8 (3) ~~his~~ commission of an offense;
- 9 (4) ~~his knowing~~ **willful** failure to use a safety appliance;
- 10 (5) ~~his knowing~~ **willful** failure to obey a reasonable written or
- 11 printed rule of the employer which has been posted in a
- 12 conspicuous position in the place of work; or
- 13 (6) ~~his knowing~~ **willful** failure to perform any statutory duty.

14 The burden of proof is on the defendant.

15 SECTION 2. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) Compensation shall be



1 allowed on account of injuries producing only temporary total disability  
 2 to work or temporary partial disability to work beginning with the  
 3 eighth (8th) day of such disability except for medical benefits provided  
 4 in section 4 of the chapter. Compensation shall be allowed for the first  
 5 seven (7) calendar days only if the disability continues for longer than  
 6 twenty-one (21) days.

7 (b) The first weekly installment of compensation for temporary  
 8 disability is due fourteen (14) days after the disability begins. Not later  
 9 than fifteen (15) days from the date that the first installment of  
 10 compensation is due, the employer or the employer's insurance carrier  
 11 shall tender to the employee or to the employee's dependents, with all  
 12 compensation due, a properly prepared compensation agreement in a  
 13 form prescribed by the board. Whenever an employer or the employer's  
 14 insurance carrier denies or is not able to determine liability to pay  
 15 compensation or benefits, the employer or the employer's insurance  
 16 carrier shall notify the worker's compensation board and the employee  
 17 in writing on a form prescribed by the worker's compensation board not  
 18 later than thirty (30) days after the employer's knowledge of the  
 19 claimed injury. If a determination of liability cannot be made within  
 20 thirty (30) days, the worker's compensation board may approve an  
 21 additional thirty (30) days upon a written request of the employer or the  
 22 employer's insurance carrier that sets forth the reasons that the  
 23 determination could not be made within thirty (30) days and states the  
 24 facts or circumstances that are necessary to determine liability within  
 25 the additional thirty (30) days. More than thirty (30) days of additional  
 26 time may be approved by the worker's compensation board upon the  
 27 filing of a petition by the employer or the employer's insurance carrier  
 28 that sets forth:

- 29 (1) the extraordinary circumstances that have precluded a
- 30 determination of liability within the initial sixty (60) days;
- 31 (2) the status of the investigation on the date the petition is filed;
- 32 (3) the facts or circumstances that are necessary to make a
- 33 determination; and
- 34 (4) a timetable for the completion of the remaining investigation.

35 An employer who fails to comply with this section is subject to a civil  
 36 penalty of fifty dollars (\$50), to be assessed and collected by the board  
 37 upon notice and hearing. Civil penalties collected under this section  
 38 shall be deposited in the state general fund.

39 (c) Once begun, temporary total disability benefits may not be  
 40 terminated by the employer unless:

- 41 (1) the employee has returned to any employment;
- 42 (2) the employee has died;



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- 1 (3) the employee has refused to undergo a medical examination  
 2 under section 6 of this chapter or has refused to accept suitable  
 3 employment under section 11 of this chapter;  
 4 (4) the employee has received five hundred (500) weeks of  
 5 temporary total disability benefits or has been paid the maximum  
 6 compensation allowed under section 22 of this chapter; ~~or~~  
 7 (5) the employee is unable or unavailable to work for reasons  
 8 unrelated to the compensable injury; **or**  
 9 **(6) the employee returns to work with limitations or**  
 10 **restrictions, and the employer converts temporary total**  
 11 **disability or temporary partial disability compensation into**  
 12 **disabled from trade compensation under section 33 of this**  
 13 **chapter.**

14 In all other cases the employer must notify the employee in writing of  
 15 the employer's intent to terminate the payment of temporary total  
 16 disability benefits and of the availability of employment, if any, on a  
 17 form approved by the board. If the employee disagrees with the  
 18 proposed termination, the employee must give written notice of  
 19 disagreement to the board and the employer within seven (7) days after  
 20 receipt of the notice of intent to terminate benefits. If the board and  
 21 employer do not receive a notice of disagreement under this section,  
 22 the employee's temporary total disability benefits shall be terminated.  
 23 Upon receipt of the notice of disagreement, the board shall immediately  
 24 contact the parties, which may be by telephone or other means, and  
 25 attempt to resolve the disagreement. If the board is unable to resolve  
 26 the disagreement within ten (10) days of receipt of the notice of  
 27 disagreement, the board shall immediately arrange for an evaluation of  
 28 the employee by an independent medical examiner. The independent  
 29 medical examiner shall be selected by mutual agreement of the parties  
 30 or, if the parties are unable to agree, appointed by the board under  
 31 IC 22-3-4-11. If the independent medical examiner determines that the  
 32 employee is no longer temporarily disabled or is still temporarily  
 33 disabled but can return to employment that the employer has made  
 34 available to the employee, or if the employee fails or refuses to appear  
 35 for examination by the independent medical examiner, temporary total  
 36 disability benefits may be terminated. If either party disagrees with the  
 37 opinion of the independent medical examiner, the party shall apply to  
 38 the board for a hearing under IC 22-3-4-5.

39 (d) An employer is not required to continue the payment of  
 40 temporary total disability benefits for more than fourteen (14) days  
 41 after the employer's proposed termination date unless the independent  
 42 medical examiner determines that the employee is temporarily disabled

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1 and unable to return to any employment that the employer has made  
2 available to the employee.

3 (e) If it is determined that as a result of this section temporary total  
4 disability benefits were overpaid, the overpayment shall be deducted  
5 from any benefits due the employee under section 10 of this chapter  
6 and, if there are no benefits due the employee or the benefits due the  
7 employee do not equal the amount of the overpayment, the employee  
8 shall be responsible for paying any overpayment which cannot be  
9 deducted from benefits due the employee.

10 SECTION 3. IC 22-3-3-33 IS ADDED TO THE INDIANA CODE  
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
12 1, 2002]: **Sec. 33. (a) If an employee:**

13 **(1) receives an injury that results in a temporary total**  
14 **disability or a temporary partial disability; and**

15 **(2) is capable of performing work with permanent limitations**  
16 **or restrictions that prevent the employee from returning to**  
17 **the position the employee held before the employee's injury;**  
18 **the employee may receive disabled from trade compensation.**

19 **(b) An employee may receive disabled from trade compensation**  
20 **for a period not to exceed:**

21 **(1) fifty-two (52) consecutive weeks; or**

22 **(2) seventy-eight (78) aggregate weeks.**

23 **(c) An employee is entitled to receive disabled from trade**  
24 **compensation in a weekly amount equal to the amount determined**  
25 **under STEP FOUR of the following formula:**

26 **STEP ONE: Determine the employee's average weekly**  
27 **earnings from employment with limitations or restrictions**  
28 **that is entered after the employee's injury, if any.**

29 **STEP TWO: Determine the employee's average weekly**  
30 **earnings from employment before the employee's injury.**

31 **STEP THREE: Determine the greater of:**

32 **(A) the STEP TWO result minus the STEP ONE result; or**

33 **(B) zero (0).**

34 **STEP FOUR: Determine the lesser of:**

35 **(A) the STEP THREE result; or**

36 **(B) seven hundred sixty-two dollars (\$762).**

37 **(d) Not later than sixty (60) days after the employee's release to**  
38 **return to work with restrictions or limitations, the employee must**  
39 **receive notice from the employer on a form provided by the board**  
40 **that informs the employee that the employee has been released to**  
41 **work with limitations or restrictions. The notice must include:**

42 **(1) an explanation of the limitations or restrictions placed on**

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the employee;  
(2) the amount of disabled from trade compensation the employee has been awarded; and  
(3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing a copy of the notice required under subsection (d) with the board.

SECTION 4. IC 22-3-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. In all proceedings before the worker's compensation board or in a court under IC 22-3-2 through IC 22-3-6, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court. **Prejudgment interest shall be awarded at a rate of ten percent (10%) per year accruing from the date of filing of the application of adjustment of claim as determined under section 5(a) of this chapter.**

SECTION 5. IC 22-3-7-16, AS AMENDED BY P.L.1-2001, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) Compensation shall be allowed on account of disablement from occupational disease resulting in only temporary total disability to work or temporary partial disability to work beginning with the eighth day of such disability except for the medical benefits provided for in section 17 of this chapter. Compensation shall be allowed for the first seven (7) calendar days only as provided in this section. The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve

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1 an additional thirty (30) days upon a written request of the employer or  
 2 the employer's insurance carrier that sets forth the reasons that the  
 3 determination could not be made within thirty (30) days and states the  
 4 facts or circumstances that are necessary to determine liability within  
 5 the additional thirty (30) days. More than thirty (30) days of additional  
 6 time may be approved by the worker's compensation board upon the  
 7 filing of a petition by the employer or the employer's insurance carrier  
 8 that sets forth:

9 (1) the extraordinary circumstances that have precluded a  
 10 determination of liability within the initial sixty (60) days;

11 (2) the status of the investigation on the date the petition is filed;

12 (3) the facts or circumstances that are necessary to make a  
 13 determination; and

14 (4) a timetable for the completion of the remaining investigation.

15 An employer who fails to comply with this section is subject to a civil  
 16 penalty of fifty dollars (\$50), to be assessed and collected by the board  
 17 upon notice and hearing. Civil penalties collected under this section  
 18 shall be deposited in the state general fund.

19 (b) Once begun, temporary total disability benefits may not be  
 20 terminated by the employer unless:

21 (1) the employee has returned to work;

22 (2) the employee has died;

23 (3) the employee has refused to undergo a medical examination  
 24 under section 20 of this chapter;

25 (4) the employee has received five hundred (500) weeks of  
 26 temporary total disability benefits or has been paid the maximum  
 27 compensation allowable under section 19 of this chapter; ~~or~~

28 (5) the employee is unable or unavailable to work for reasons  
 29 unrelated to the compensable disease; ~~or~~

30 **(6) the employee returns to work with limitations or**  
 31 **restrictions, and the employer converts temporary total**  
 32 **disability or temporary partial disability compensation into**  
 33 **disabled from trade compensation under section 16.5 of this**  
 34 **chapter.**

35 In all other cases the employer must notify the employee in writing of  
 36 the employer's intent to terminate the payment of temporary total  
 37 disability benefits, and of the availability of employment, if any, on a  
 38 form approved by the board. If the employee disagrees with the  
 39 proposed termination, the employee must give written notice of  
 40 disagreement to the board and the employer within seven (7) days after  
 41 receipt of the notice of intent to terminate benefits. If the board and  
 42 employer do not receive a notice of disagreement under this section,



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1 the employee's temporary total disability benefits shall be terminated.  
2 Upon receipt of the notice of disagreement, the board shall immediately  
3 contact the parties, which may be by telephone or other means and  
4 attempt to resolve the disagreement. If the board is unable to resolve  
5 the disagreement within ten (10) days of receipt of the notice of  
6 disagreement, the board shall immediately arrange for an evaluation of  
7 the employee by an independent medical examiner. The independent  
8 medical examiner shall be selected by mutual agreement of the parties  
9 or, if the parties are unable to agree, appointed by the board under  
10 IC 22-3-4-11. If the independent medical examiner determines that the  
11 employee is no longer temporarily disabled or is still temporarily  
12 disabled but can return to employment that the employer has made  
13 available to the employee, or if the employee fails or refuses to appear  
14 for examination by the independent medical examiner, temporary total  
15 disability benefits may be terminated. If either party disagrees with the  
16 opinion of the independent medical examiner, the party shall apply to  
17 the board for a hearing under section 27 of this chapter.

18 (c) An employer is not required to continue the payment of  
19 temporary total disability benefits for more than fourteen (14) days  
20 after the employer's proposed termination date unless the independent  
21 medical examiner determines that the employee is temporarily disabled  
22 and unable to return to any employment that the employer has made  
23 available to the employee.

24 (d) If it is determined that as a result of this section temporary total  
25 disability benefits were overpaid, the overpayment shall be deducted  
26 from any benefits due the employee under this section and, if there are  
27 no benefits due the employee or the benefits due the employee do not  
28 equal the amount of the overpayment, the employee shall be  
29 responsible for paying any overpayment which cannot be deducted  
30 from benefits due the employee.

31 (e) For disablements occurring on and after April 1, 1951, and prior  
32 to July 1, 1971, from occupational disease resulting in temporary total  
33 disability for any work there shall be paid to the disabled employee  
34 during such temporary total disability a weekly compensation equal to  
35 sixty percent (60%) of the employee's average weekly wages for a  
36 period not to exceed five hundred (500) weeks. Compensation shall be  
37 allowed for the first seven (7) calendar days only if the disability  
38 continues for longer than twenty-eight (28) days.

39 For disablements occurring on and after July 1, 1971, and prior to  
40 July 1, 1974, from occupational disease resulting in temporary total  
41 disability for any work there shall be paid to the disabled employee  
42 during such temporary total disability a weekly compensation equal to

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1 sixty percent (60%) of the employee's average weekly wages, as  
 2 defined in section 19 of this chapter, for a period not to exceed five  
 3 hundred (500) weeks. Compensation shall be allowed for the first seven  
 4 (7) calendar days only if the disability continues for longer than  
 5 twenty-eight (28) days.

6 For disablements occurring on and after July 1, 1974, and before  
 7 July 1, 1976, from occupational disease resulting in temporary total  
 8 disability for any work there shall be paid to the disabled employee  
 9 during such temporary total disability a weekly compensation equal to  
 10 sixty-six and two-thirds percent (66 2/3%) of the employee's average  
 11 weekly wages, up to one hundred thirty-five dollars (\$135) average  
 12 weekly wages, as defined in section 19 of this chapter, for a period not  
 13 to exceed five hundred (500) weeks. Compensation shall be allowed for  
 14 the first seven (7) calendar days only if the disability continues for  
 15 longer than twenty-one (21) days.

16 For disablements occurring on and after July 1, 1976, from  
 17 occupational disease resulting in temporary total disability for any work  
 18 there shall be paid to the disabled employee during the temporary total  
 19 disability weekly compensation equal to sixty-six and two-thirds  
 20 percent (66 2/3%) of the employee's average weekly wages, as defined  
 21 in section 19 of this chapter, for a period not to exceed five hundred  
 22 (500) weeks. Compensation shall be allowed for the first seven (7)  
 23 calendar days only if the disability continues for longer than twenty-one  
 24 (21) days.

25 (f) For disablements occurring on and after April 1, 1951, and prior  
 26 to July 1, 1971, from occupational disease resulting in temporary  
 27 partial disability for work there shall be paid to the disabled employee  
 28 during such disability a weekly compensation equal to sixty percent  
 29 (60%) of the difference between the employee's average weekly wages  
 30 and the weekly wages at which the employee is actually employed after  
 31 the disablement, for a period not to exceed three hundred (300) weeks.  
 32 Compensation shall be allowed for the first seven (7) calendar days  
 33 only if the disability continues for longer than twenty-eight (28) days.  
 34 In case of partial disability after the period of temporary total disability,  
 35 the later period shall be included as part of the maximum period  
 36 allowed for partial disability.

37 For disablements occurring on and after July 1, 1971, and prior to  
 38 July 1, 1974, from occupational disease resulting in temporary partial  
 39 disability for work there shall be paid to the disabled employee during  
 40 such disability a weekly compensation equal to sixty percent (60%) of  
 41 the difference between the employee's average weekly wages, as  
 42 defined in section 19 of this chapter, and the weekly wages at which the

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1 employee is actually employed after the disablement, for a period not  
 2 to exceed three hundred (300) weeks. Compensation shall be allowed  
 3 for the first seven (7) calendar days only if the disability continues for  
 4 longer than twenty-eight (28) days. In case of partial disability after the  
 5 period of temporary total disability, the latter period shall be included  
 6 as a part of the maximum period allowed for partial disability.

7 For disablements occurring on and after July 1, 1974, from  
 8 occupational disease resulting in temporary partial disability for work  
 9 there shall be paid to the disabled employee during such disability a  
 10 weekly compensation equal to sixty-six and two-thirds percent (66  
 11 2/3%) of the difference between the employee's average weekly wages,  
 12 as defined in section 19 of this chapter, and the weekly wages at which  
 13 ~~he~~ **the employee** is actually employed after the disablement, for a  
 14 period not to exceed three hundred (300) weeks. Compensation shall  
 15 be allowed for the first seven (7) calendar days only if the disability  
 16 continues for longer than twenty-one (21) days. In case of partial  
 17 disability after the period of temporary total disability, the latter period  
 18 shall be included as a part of the maximum period allowed for partial  
 19 disability.

20 (g) For disabilities occurring on and after April 1, 1951, and prior  
 21 to April 1, 1955, from occupational disease in the following schedule,  
 22 the employee shall receive in lieu of all other compensation, on account  
 23 of such disabilities, a weekly compensation of sixty percent (60%) of  
 24 the employee's average weekly wage; for disabilities occurring on and  
 25 after April 1, 1955, and prior to July 1, 1971, from occupational disease  
 26 in the following schedule, the employee shall receive in addition to  
 27 disability benefits not exceeding twenty-six (26) weeks on account of  
 28 said occupational disease a weekly compensation of sixty percent  
 29 (60%) of the employee's average weekly wages.

30 For disabilities occurring on and after July 1, 1971, and before July  
 31 1, 1977, from occupational disease in the following schedule, the  
 32 employee shall receive in addition to disability benefits not exceeding  
 33 twenty-six (26) weeks on account of said occupational disease a weekly  
 34 compensation of sixty percent (60%) of ~~his~~ **the employee's** average  
 35 weekly wages not to exceed one hundred dollars (\$100) average weekly  
 36 wages, for the period stated for such disabilities respectively.

37 For disabilities occurring on and after July 1, 1977, and before July  
 38 1, 1979, from occupational disease in the following schedule, the  
 39 employee shall receive in addition to disability benefits not exceeding  
 40 twenty-six (26) weeks on account of the occupational disease a weekly  
 41 compensation of sixty percent (60%) of the employee's average weekly  
 42 wages, not to exceed one hundred twenty-five dollars (\$125) average

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1 weekly wages, for the period stated for the disabilities.

2 For disabilities occurring on and after July 1, 1979, and before July  
3 1, 1988, from occupational disease in the following schedule, the  
4 employee shall receive in addition to disability benefits, not exceeding  
5 fifty-two (52) weeks on account of the occupational disease, a weekly  
6 compensation of sixty percent (60%) of the employee's average weekly  
7 wages, not to exceed one hundred twenty-five dollars (\$125) average  
8 weekly wages, for the period stated for the disabilities.

9 For disabilities occurring on and after July 1, 1988, and before July  
10 1, 1989, from occupational disease in the following schedule, the  
11 employee shall receive in addition to disability benefits, not exceeding  
12 seventy-eight (78) weeks on account of the occupational disease, a  
13 weekly compensation of sixty percent (60%) of the employee's average  
14 weekly wages, not to exceed one hundred sixty-six dollars (\$166)  
15 average weekly wages, for the period stated for the disabilities.

16 For disabilities occurring on and after July 1, 1989, and before July  
17 1, 1990, from occupational disease in the following schedule, the  
18 employee shall receive in addition to disability benefits, not exceeding  
19 seventy-eight (78) weeks on account of the occupational disease, a  
20 weekly compensation of sixty percent (60%) of the employee's average  
21 weekly wages, not to exceed one hundred eighty-three dollars (\$183)  
22 average weekly wages, for the period stated for the disabilities.

23 For disabilities occurring on and after July 1, 1990, and before July  
24 1, 1991, from occupational disease in the following schedule, the  
25 employee shall receive in addition to disability benefits, not exceeding  
26 seventy-eight (78) weeks on account of the occupational disease, a  
27 weekly compensation of sixty percent (60%) of the employee's average  
28 weekly wages, not to exceed two hundred dollars (\$200) average  
29 weekly wages, for the period stated for the disabilities.

30 (1) Amputations: For the loss by separation, of the thumb, sixty  
31 (60) weeks; of the index finger, forty (40) weeks; of the second  
32 finger, thirty-five (35) weeks; of the third or ring finger, thirty  
33 (30) weeks; of the fourth or little finger, twenty (20) weeks; of the  
34 hand by separation below the elbow, two hundred (200) weeks; of  
35 the arm above the elbow joint, two hundred fifty (250) weeks; of  
36 the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks;  
37 of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15)  
38 weeks; of the fifth or little toe, ten (10) weeks; of the foot below  
39 the knee joint, one hundred fifty (150) weeks; and of the leg  
40 above the knee joint, two hundred (200) weeks. The loss of more  
41 than one (1) phalange of a thumb or toe shall be considered as the  
42 loss of the entire thumb or toe. The loss of more than two (2)

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1 phalanges of a finger shall be considered as the loss of the entire  
2 finger. The loss of not more than one (1) phalange of a thumb or  
3 toe shall be considered as the loss of one-half (1/2) of the thumb  
4 or toe and compensation shall be paid for one-half (1/2) of the  
5 period for the loss of the entire thumb or toe. The loss of not more  
6 than two (2) phalanges of a finger shall be considered as the loss  
7 of one-half (1/2) the finger and compensation shall be paid for  
8 one-half (1/2) of the period for the loss of the entire finger.

9 (2) Loss of Use: The total permanent loss of the use of an arm,  
10 hand, thumb, finger, leg, foot, toe, or phalange shall be considered  
11 as the equivalent of the loss by separation of the arm, hand,  
12 thumb, finger, leg, foot, toe, or phalange and the compensation  
13 shall be paid for the same period as for the loss thereof by  
14 separation.

15 (3) Partial Loss of Use: For the permanent partial loss of the use  
16 of an arm, hand, thumb, finger, leg, foot, toe, or phalange,  
17 compensation shall be paid for the proportionate loss of the use of  
18 such arm, hand, thumb, finger, leg, foot, toe, or phalange.

19 (4) For disablements for occupational disease resulting in total  
20 permanent disability, five hundred (500) weeks.

21 (5) For the loss of both hands, or both feet, or the total sight of  
22 both eyes, or any two (2) of such losses resulting from the same  
23 disablement by occupational disease, five hundred (500) weeks.

24 (6) For the permanent and complete loss of vision by enucleation  
25 of an eye or its reduction to one-tenth (1/10) of normal vision with  
26 glasses, one hundred fifty (150) weeks, and for any other  
27 permanent reduction of the sight of an eye, compensation shall be  
28 paid for a period proportionate to the degree of such permanent  
29 reduction without correction or glasses. However, when such  
30 permanent reduction without correction or glasses would result in  
31 one hundred percent (100%) loss of vision, but correction or  
32 glasses would result in restoration of vision, then compensation  
33 shall be paid for fifty percent (50%) of such total loss of vision  
34 without glasses plus an additional amount equal to the  
35 proportionate amount of such reduction with glasses, not to  
36 exceed an additional fifty percent (50%).

37 (7) For the permanent and complete loss of hearing, two hundred  
38 (200) weeks.

39 (8) In all other cases of permanent partial impairment,  
40 compensation proportionate to the degree of such permanent  
41 partial impairment, in the discretion of the worker's compensation  
42 board, not exceeding five hundred (500) weeks.

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1 (9) In all cases of permanent disfigurement, which may impair the  
 2 future usefulness or opportunities of the employee, compensation  
 3 in the discretion of the worker's compensation board, not  
 4 exceeding two hundred (200) weeks, except that no compensation  
 5 shall be payable under this paragraph where compensation shall  
 6 be payable under subdivisions (1) through (8). Where  
 7 compensation for temporary total disability has been paid, this  
 8 amount of compensation shall be deducted from any  
 9 compensation due for permanent disfigurement.

10 With respect to disablements in the following schedule occurring on  
 11 and after July 1, 1991, the employee shall receive in addition to  
 12 temporary total disability benefits, not exceeding one hundred  
 13 twenty-five (125) weeks on account of the disablement, compensation  
 14 in an amount determined under the following schedule to be paid  
 15 weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the  
 16 employee's average weekly wages during the fifty-two (52) weeks  
 17 immediately preceding the week in which the disablement occurred:

18 (1) Amputation: For the loss by separation of the thumb, twelve  
 19 (12) degrees of permanent impairment; of the index finger, eight  
 20 (8) degrees of permanent impairment; of the second finger, seven  
 21 (7) degrees of permanent impairment; of the third or ring finger,  
 22 six (6) degrees of permanent impairment; of the fourth or little  
 23 finger, four (4) degrees of permanent impairment; of the hand by  
 24 separation below the elbow joint, forty (40) degrees of permanent  
 25 impairment; of the arm above the elbow, fifty (50) degrees of  
 26 permanent impairment; of the big toe, twelve (12) degrees of  
 27 permanent impairment; of the second toe, six (6) degrees of  
 28 permanent impairment; of the third toe, four (4) degrees of  
 29 permanent impairment; of the fourth toe, three (3) degrees of  
 30 permanent impairment; of the fifth or little toe, two (2) degrees of  
 31 permanent impairment; of separation of the foot below the knee  
 32 joint, thirty-five (35) degrees of permanent impairment; and of the  
 33 leg above the knee joint, forty-five (45) degrees of permanent  
 34 impairment.

35 (2) Amputations occurring on or after July 1, 1997: For the loss  
 36 by separation of any of the body parts described in subdivision (1)  
 37 on or after July 1, 1997, the dollar values per degree applying on  
 38 the date of the injury as described in subsection (h) shall be  
 39 multiplied by two (2). However, the doubling provision of this  
 40 subdivision does not apply to a loss of use that is not a loss by  
 41 separation.

42 (3) The loss of more than one (1) phalange of a thumb or toe shall

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- 1 be considered as the loss of the entire thumb or toe. The loss of  
2 more than two (2) phalanges of a finger shall be considered as the  
3 loss of the entire finger. The loss of not more than one (1)  
4 phalange of a thumb or toe shall be considered as the loss of  
5 one-half (1/2) of the degrees of permanent impairment for the loss  
6 of the entire thumb or toe. The loss of not more than one (1)  
7 phalange of a finger shall be considered as the loss of one-third  
8 (1/3) of the finger and compensation shall be paid for one-third  
9 (1/3) of the degrees payable for the loss of the entire finger. The  
10 loss of more than one (1) phalange of the finger but not more than  
11 two (2) phalanges of the finger shall be considered as the loss of  
12 one-half (1/2) of the finger and compensation shall be paid for  
13 one-half (1/2) of the degrees payable for the loss of the entire  
14 finger.
- 15 (4) For the loss by separation of both hands or both feet or the  
16 total sight of both eyes or any two (2) such losses in the same  
17 accident, one hundred (100) degrees of permanent impairment.
- 18 (5) For the permanent and complete loss of vision by enucleation  
19 or its reduction to one-tenth (1/10) of normal vision with glasses,  
20 thirty-five (35) degrees of permanent impairment.
- 21 (6) For the permanent and complete loss of hearing in one (1) ear,  
22 fifteen (15) degrees of permanent impairment, and in both ears,  
23 forty (40) degrees of permanent impairment.
- 24 (7) For the loss of one (1) testicle, ten (10) degrees of permanent  
25 impairment; for the loss of both testicles, thirty (30) degrees of  
26 permanent impairment.
- 27 (8) Loss of use: The total permanent loss of the use of an arm, a  
28 hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be  
29 considered as the equivalent of the loss by separation of the arm,  
30 hand, thumb, finger, leg, foot, toe, or phalange, and compensation  
31 shall be paid in the same amount as for the loss by separation.  
32 However, the doubling provision of subdivision (2) does not  
33 apply to a loss of use that is not a loss by separation.
- 34 (9) Partial loss of use: For the permanent partial loss of the use of  
35 an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a  
36 phalange, compensation shall be paid for the proportionate loss of  
37 the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.
- 38 (10) For disablements resulting in total permanent disability, the  
39 amount payable for impairment or five hundred (500) weeks of  
40 compensation, whichever is greater.
- 41 (11) For any permanent reduction of the sight of an eye less than  
42 a total loss as specified in subdivision (5), the compensation shall

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1 be paid in an amount proportionate to the degree of a permanent  
 2 reduction without correction or glasses. However, when a  
 3 permanent reduction without correction or glasses would result in  
 4 one hundred percent (100%) loss of vision, then compensation  
 5 shall be paid for fifty percent (50%) of the total loss of vision  
 6 without glasses, plus an additional amount equal to the  
 7 proportionate amount of the reduction with glasses, not to exceed  
 8 an additional fifty percent (50%).

9 (12) For any permanent reduction of the hearing of one (1) or both  
 10 ears, less than the total loss as specified in subdivision (6),  
 11 compensation shall be paid in an amount proportionate to the  
 12 degree of a permanent reduction.

13 (13) In all other cases of permanent partial impairment,  
 14 compensation proportionate to the degree of a permanent partial  
 15 impairment, in the discretion of the worker's compensation board,  
 16 not exceeding one hundred (100) degrees of permanent  
 17 impairment.

18 (14) In all cases of permanent disfigurement which may impair  
 19 the future usefulness or opportunities of the employee,  
 20 compensation, in the discretion of the worker's compensation  
 21 board, not exceeding forty (40) degrees of permanent impairment  
 22 except that no compensation shall be payable under this  
 23 subdivision where compensation is payable elsewhere in this  
 24 section.

25 (h) With respect to disablements occurring on and after July 1,  
 26 1991, compensation for permanent partial impairment shall be paid  
 27 according to the degree of permanent impairment for the disablement  
 28 determined under subsection (d) and the following:

29 (1) With respect to disablements occurring on and after July 1,  
 30 1991, and before July 1, 1992, for each degree of permanent  
 31 impairment from one (1) to thirty-five (35), five hundred dollars  
 32 (\$500) per degree; for each degree of permanent impairment from  
 33 thirty-six (36) to fifty (50), nine hundred dollars (\$900) per  
 34 degree; for each degree of permanent impairment above fifty (50),  
 35 one thousand five hundred dollars (\$1,500) per degree.

36 (2) With respect to disablements occurring on and after July 1,  
 37 1992, and before July 1, 1993, for each degree of permanent  
 38 impairment from one (1) to twenty (20), five hundred dollars  
 39 (\$500) per degree; for each degree of permanent impairment from  
 40 twenty-one (21) to thirty-five (35), eight hundred dollars (\$800)  
 41 per degree; for each degree of permanent impairment from  
 42 thirty-six (36) to fifty (50), one thousand three hundred dollars

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1 (\$1,300) per degree; for each degree of permanent impairment  
 2 above fifty (50), one thousand seven hundred dollars (\$1,700) per  
 3 degree.  
 4 (3) With respect to disablements occurring on and after July 1,  
 5 1993, and before July 1, 1997, for each degree of permanent  
 6 impairment from one (1) to ten (10), five hundred dollars (\$500)  
 7 per degree; for each degree of permanent impairment from eleven  
 8 (11) to twenty (20), seven hundred dollars (\$700) per degree; for  
 9 each degree of permanent impairment from twenty-one (21) to  
 10 thirty-five (35), one thousand dollars (\$1,000) per degree; for  
 11 each degree of permanent impairment from thirty-six (36) to fifty  
 12 (50), one thousand four hundred dollars (\$1,400) per degree; for  
 13 each degree of permanent impairment above fifty (50), one  
 14 thousand seven hundred dollars (\$1,700) per degree.  
 15 (4) With respect to disablements occurring on and after July 1,  
 16 1997, and before July 1, 1998, for each degree of permanent  
 17 impairment from one (1) to ten (10), seven hundred fifty dollars  
 18 (\$750) per degree; for each degree of permanent impairment from  
 19 eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per  
 20 degree; for each degree of permanent impairment from thirty-six  
 21 (36) to fifty (50), one thousand four hundred dollars (\$1,400) per  
 22 degree; for each degree of permanent impairment above fifty (50),  
 23 one thousand seven hundred dollars (\$1,700) per degree.  
 24 (5) With respect to disablements occurring on and after July 1,  
 25 1998, and before July 1, 1999, for each degree of permanent  
 26 impairment from one (1) to ten (10), seven hundred fifty dollars  
 27 (\$750) per degree; for each degree of permanent impairment from  
 28 eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per  
 29 degree; for each degree of permanent impairment from thirty-six  
 30 (36) to fifty (50), one thousand four hundred dollars (\$1,400) per  
 31 degree; for each degree of permanent impairment above fifty (50),  
 32 one thousand seven hundred dollars (\$1,700) per degree.  
 33 (6) With respect to disablements occurring on and after July 1,  
 34 1999, and before July 1, 2000, for each degree of permanent  
 35 impairment from one (1) to ten (10), nine hundred dollars (\$900)  
 36 per degree; for each degree of permanent impairment from eleven  
 37 (11) to thirty-five (35), one thousand one hundred dollars  
 38 (\$1,100) per degree; for each degree of permanent impairment  
 39 from thirty-six (36) to fifty (50), one thousand six hundred dollars  
 40 (\$1,600) per degree; for each degree of permanent impairment  
 41 above fifty (50), two thousand dollars (\$2,000) per degree.  
 42 (7) With respect to disablements occurring on and after July 1,

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- 1 2000, and before July 1, 2001, for each degree of permanent  
2 impairment from one (1) to ten (10), one thousand one hundred  
3 dollars (\$1,100) per degree; for each degree of permanent  
4 impairment from eleven (11) to thirty-five (35), one thousand  
5 three hundred dollars (\$1,300) per degree; for each degree of  
6 permanent impairment from thirty-six (36) to fifty (50), two  
7 thousand dollars (\$2,000) per degree; for each degree of  
8 permanent impairment above fifty (50), two thousand five  
9 hundred fifty dollars (\$2,500) per degree.
- 10 (8) With respect to disablements occurring on and after July 1,  
11 2001, for each degree of permanent impairment from one (1) to  
12 ten (10), one thousand three hundred dollars (\$1,300) per degree;  
13 for each degree of permanent impairment from eleven (11) to  
14 thirty-five (35), one thousand five hundred dollars (\$1,500) per  
15 degree; for each degree of permanent impairment from thirty-six  
16 (36) to fifty (50), two thousand four hundred dollars (\$2,400) per  
17 degree; for each degree of permanent impairment above fifty (50),  
18 three thousand dollars (\$3,000) per degree.
- 19 (i) The average weekly wages used in the determination of  
20 compensation for permanent partial impairment under subsections (g)  
21 and (h) shall not exceed the following:
- 22 (1) With respect to disablements occurring on or after July 1,  
23 1991, and before July 1, 1992, four hundred ninety-two dollars  
24 (\$492).
- 25 (2) With respect to disablements occurring on or after July 1,  
26 1992, and before July 1, 1993, five hundred forty dollars (\$540).
- 27 (3) With respect to disablements occurring on or after July 1,  
28 1993, and before July 1, 1994, five hundred ninety-one dollars  
29 (\$591).
- 30 (4) With respect to disablements occurring on or after July 1,  
31 1994, and before July 1, 1997, six hundred forty-two dollars  
32 (\$642).
- 33 (5) With respect to disablements occurring on or after July 1,  
34 1997, and before July 1, 1998, six hundred seventy-two dollars  
35 (\$672).
- 36 (6) With respect to disablements occurring on or after July 1,  
37 1998, and before July 1, 1999, seven hundred two dollars (\$702).
- 38 (7) With respect to disablements occurring on or after July 1,  
39 1999, and before July 1, 2000, seven hundred thirty-two dollars  
40 (\$732).
- 41 (8) With respect to disablements occurring on or after July 1,  
42 2000, and before July 1, 2001, seven hundred sixty-two dollars

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(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, eight hundred eighty-two dollars (\$882).

(j) If any employee, only partially disabled, refuses employment suitable to ~~his~~ **the employee's** capacity ~~procured for him;~~ ~~he~~ **the employee** shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

(k) If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which ~~he~~ **the employee** suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

(l) If an employee suffers a disablement from occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, ~~he~~ **the employee** shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection (g)(1), (g)(4), (g)(5), (g)(8), or (g)(9); but the employee

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1 shall be entitled to compensation for that disability and from the time  
2 of that disability which will cover the longest period and the largest  
3 amount payable under this chapter.

4 (m) If an employee receives a permanent disability from  
5 occupational disease such as specified in subsection (g)(1), (g)(4),  
6 (g)(5), (g)(8), or (g)(9) after having sustained another such permanent  
7 disability in the same employment the employee shall be entitled to  
8 compensation for both such disabilities, but the total compensation  
9 shall be paid by extending the period and not by increasing the amount  
10 of weekly compensation and, when such previous and subsequent  
11 permanent disabilities, in combination result in total permanent  
12 disability or permanent total impairment, compensation shall be  
13 payable for such permanent total disability or impairment, but  
14 payments made for the previous disability or impairment shall be  
15 deducted from the total payment of compensation due.

16 (n) When an employee has been awarded or is entitled to an award  
17 of compensation for a definite period under this chapter for disability  
18 from occupational disease, which disablement occurs on and after April  
19 1, 1951, and prior to April 1, 1963, and such employee dies from any  
20 other cause than such occupational disease, payment of the unpaid  
21 balance of such compensation, not exceeding three hundred (300)  
22 weeks, shall be made to the employee's dependents of the second and  
23 third class as defined in sections 11 through 14 of this chapter, and  
24 compensation, not exceeding five hundred (500) weeks, shall be made  
25 to the employee's dependents of the first class as defined in sections 11  
26 through 14 of this chapter. When an employee has been awarded or is  
27 entitled to an award of compensation for a definite period from an  
28 occupational disease wherein disablement occurs on and after April 1,  
29 1963, and such employee dies from other causes than such  
30 occupational disease, payment of the unpaid balance of such  
31 compensation not exceeding three hundred fifty (350) weeks shall be  
32 paid to the employee's dependents of the second and third class as  
33 defined in sections 11 through 14 of this chapter and compensation, not  
34 exceeding five hundred (500) weeks shall be made to the employee's  
35 dependents of the first class as defined in sections 11 through 14 of this  
36 chapter.

37 (o) Any payment made by the employer to the employee during the  
38 period of the employee's disability, or to the employee's dependents,  
39 which, by the terms of this chapter, was not due and payable when  
40 made, may, subject to the approval of the worker's compensation board,  
41 be deducted from the amount to be paid as compensation, but such  
42 deduction shall be made from the distal end of the period during which

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1 compensation must be paid, except in cases of temporary disability.

2 (p) When so provided in the compensation agreement or in the  
3 award of the worker's compensation board, compensation may be paid  
4 semimonthly, or monthly, instead of weekly.

5 (q) When the aggregate payments of compensation awarded by  
6 agreement or upon hearing to an employee or dependent under eighteen  
7 (18) years of age do not exceed one hundred dollars (\$100), the  
8 payment thereof may be made directly to such employee or dependent,  
9 except when the worker's compensation board shall order otherwise.

10 Whenever the aggregate payments of compensation, due to any  
11 person under eighteen (18) years of age, exceed one hundred dollars  
12 (\$100), the payment thereof shall be made to a trustee, appointed by the  
13 circuit or superior court, or to a duly qualified guardian, or, upon the  
14 order of the worker's compensation board, to a parent or to such minor  
15 person. The payment of compensation, due to any person eighteen (18)  
16 years of age or over, may be made directly to such person.

17 (r) If an employee, or a dependent, is mentally incompetent, or a  
18 minor at the time when any right or privilege accrues to the employee  
19 under this chapter, the employee's guardian or trustee may, in the  
20 employee's behalf, claim and exercise such right and privilege.

21 (s) All compensation payments named and provided for in this  
22 section, shall mean and be defined to be for only such occupational  
23 diseases and disabilities therefrom as are proved by competent  
24 evidence, of which there are or have been objective conditions or  
25 symptoms proven, not within the physical or mental control of the  
26 employee himself.

27 SECTION 6. IC 22-3-7-16.1 IS ADDED TO THE INDIANA CODE  
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
29 1, 2002]: **Sec. 16.1. (a) As used in this section, "board" refers to the  
30 worker's compensation board created by IC 22-3-1-1.**

31 **(b) If an employee who from an occupational disease becomes  
32 permanently and totally impaired by reason of the loss, or loss of  
33 use of, another such member or eye, the employer is liable only for  
34 the compensation payable for the second injury. However, in  
35 addition to that compensation and after the completion of the  
36 payment for that compensation, the employee shall be paid the  
37 remainder of the compensation that would be due for the total  
38 permanent impairment out of a special fund known as the  
39 occupational disease second injury fund.**

40 (c) Whenever the board determines under the procedures set  
41 forth in subsection (d) that an assessment is necessary to ensure  
42 that fund beneficiaries continue to receive compensation in a timely

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manner for a reasonable prospective period, the board shall send notice not later than October 1 in any year to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or for the death of one (1) of their employees from an occupational disease; and

(2) each employer carrying the employer's own risk for personal injuries to or the death of one (1) of their employees from an occupational disease;

stating that an assessment is necessary. The board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier insuring employers who are or may be liable under this article to pay compensation for disablement or death from occupational diseases of their employees under this article and every employer carrying the employer's own risk shall, not later than thirty (30) days after receiving notice from the board, pay to the worker's compensation board for the benefit of a fund to be known as the occupational disease second injury fund. The payment shall be in a sum equal to one and one-half percent (1.5%) of the total amount of all payments under this chapter for occupational diseases paid to employees with occupational diseases or their beneficiaries under this chapter for the calendar year next preceding the due date of the payment. If the amount to the credit of the occupational diseases second injury fund as of October 1 of any year exceeds one million dollars (\$1,000,000), the payments of one and one-half percent (1.5%) shall not be assessed or collected during the ensuing year. However, if on October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of one and one-half percent (1.5%) of the total amount of all payments under this chapter for occupational diseases paid to employees with occupational diseases or their beneficiaries under this chapter for the calendar year next preceding that date shall be resumed and paid into the fund.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount

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1 required under subsection (c), the board may conduct an  
 2 assessment under subsection (c). The board shall pay the costs of  
 3 the contract under this subsection with money in the fund.

4 (e) An assessment collected under subsection (c) on an employer  
 5 who is not self-insured must be assessed through a surcharge based  
 6 on the employer's premium. An assessment collected under  
 7 subsection (c) does not constitute an element of loss, but for the  
 8 purpose of collection shall be treated as a separate cost imposed  
 9 upon insured employers. A premium surcharge under this  
 10 subsection must be collected at the same time and in the same  
 11 manner in which the premium for coverage is collected, and must  
 12 be shown as a separate amount on a premium statement. A  
 13 premium surcharge under this subsection must be excluded from  
 14 the definition of premium for all purposes, including the  
 15 computation of agent commissions or premium taxes. However, an  
 16 insurer may cancel a worker's compensation policy for  
 17 nonpayment of the premium surcharge. A cancellation under this  
 18 subsection must be carried out under the statutes applicable to the  
 19 nonpayment of premiums.

20 (f) The sums under this section shall be paid by the worker's  
 21 compensation board to the treasurer of state, to be deposited in a  
 22 special account known as the occupational diseases second injury  
 23 fund. The fund is not part of the state general fund. Any balance  
 24 remaining in the account at the end of any fiscal year does not  
 25 revert to the state general fund. The fund shall be used only for the  
 26 payment of awards of compensation and expense of medical  
 27 examinations or treatment made and ordered by the board and  
 28 chargeable against the occupational diseases second injury fund  
 29 under this section and shall be paid for that purpose by the  
 30 treasurer of state upon award or order of the board.

31 (g) If an employee who is entitled to compensation under this  
 32 chapter either:

- 33 (1) exhausts the maximum benefits under section 19 of this
- 34 chapter without having received the full amount of award
- 35 granted to the employee under section 16 of this chapter; or
- 36 (2) exhausts the employee's benefits under section 16 of this
- 37 chapter;

38 the employee may apply to the worker's compensation board,  
 39 which may award the employee compensation from the  
 40 occupational diseases second injury fund established by this  
 41 section, as provided under subsection (b).

42 (h) An employee who has exhausted the employee's maximum

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1 benefits under section 10 of this chapter may be awarded  
 2 additional compensation equal to sixty-six and two-thirds percent  
 3 (66 2/3%) of the employee's average weekly wage at the time of the  
 4 employee's disablement from occupational disease, not to exceed  
 5 the maximum then applicable under section 19 of this chapter for  
 6 a period not to exceed one hundred fifty (150) weeks upon  
 7 competent evidence sufficient to establish:

8 (1) that the employee is totally and permanently disabled from  
 9 an occupational disease of which there are or have been  
 10 objective conditions and symptoms proven that are not within  
 11 the physical or mental control of the employee; and

12 (2) that the employee is unable to support the employee in any  
 13 gainful employment, not associated with rehabilitative or  
 14 vocational therapy.

15 (i) The additional award may be renewed during the employee's  
 16 total and permanent disability after appropriate hearings by the  
 17 worker's compensation board for successive periods not to exceed  
 18 one hundred fifty (150) weeks each.

19 SECTION 7. IC 22-3-7-16.5 IS ADDED TO THE INDIANA CODE  
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 21 1, 2002]: Sec. 16.5. (a) If an employee:

22 (1) suffers an occupational disease that results in a temporary  
 23 total disability or a temporary partial disability; and

24 (2) is capable of performing work with permanent limitations  
 25 or restrictions that prevent the employee from returning to  
 26 the position the employee held before the employee's  
 27 occupational disease;

28 the employee may receive disabled from trade compensation.

29 (b) An employee may receive disabled from trade compensation  
 30 for a period not to exceed:

31 (1) fifty-two (52) consecutive weeks; or

32 (2) seventy-eight (78) aggregate weeks.

33 (c) An employee is entitled to receive disabled from trade  
 34 compensation in a weekly amount equal to the amount determined  
 35 under STEP FOUR of the following formula:

36 STEP ONE: Determine the employee's average weekly  
 37 earnings from employment with limitations or restrictions  
 38 that is entered after the employee's occupational disease, if  
 39 any.

40 STEP TWO: Determine the employee's average weekly  
 41 earnings from employment before the employee's  
 42 occupational disease.

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**STEP THREE: Determine the greater of:**  
 (A) the STEP TWO result minus the STEP ONE result; or  
 (B) zero (0).

**STEP FOUR: Determine the lesser of:**  
 (A) the STEP THREE result; or  
 (B) seven hundred sixty-two dollars (\$762).

(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

- (1) an explanation of the limitations or restrictions placed on the employee;
- (2) the amount of disabled from trade compensation the employee has been awarded; and
- (3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing a copy of the notice required under subsection (d) with the board.

SECTION 8. IC 22-3-7-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) No compensation is allowed for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of accidental injury under chapters 2 through 6 of this article.

(b) ~~No~~ **The monetary compensation is allowed under IC 22-3-7-16 and IC 22-3-7-19 shall be reduced by twenty percent (20%)** for any disease or death ~~knowingly~~ **willfully** self-inflicted by the employee, or due to:

- (1) ~~his~~ intoxication;
- (2) ~~his~~ commission of an offense;
- (3) ~~his knowing~~ **willful** failure to use a safety appliance;
- (4) ~~his knowing~~ **willful** failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work; or
- (5) ~~his knowing~~ **willful** failure to perform any statutory duty.

The burden of proof is on the defendant.

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1 SECTION 9. IC 22-3-7-27, AS AMENDED BY P.L.235-1999,  
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2002]: Sec. 27. (a) If the employer and the employee or the  
4 employee's dependents disagree in regard to the compensation payable  
5 under this chapter, or, if they have reached such an agreement, which  
6 has been signed by them, filed with and approved by the worker's  
7 compensation board, and afterward disagree as to the continuance of  
8 payments under such agreement, or as to the period for which payments  
9 shall be made, or as to the amount to be paid, because of a change in  
10 conditions since the making of such agreement, either party may then  
11 make an application to the board for the determination of the matters  
12 in dispute. When compensation which is payable in accordance with an  
13 award or by agreement approved by the board is ordered paid in a lump  
14 sum by the board, no review shall be had as in this subsection  
15 mentioned.

16 (b) The application making claim for compensation filed with the  
17 worker's compensation board shall state the following:

18 (1) The approximate date of the last day of the last exposure and  
19 the approximate date of the disablement.

20 (2) The general nature and character of the illness or disease  
21 claimed.

22 (3) The name and address of the employer by whom employed on  
23 the last day of the last exposure, and if employed by any other  
24 employer after such last exposure and before disablement, the  
25 name and address of such other employer or employers.

26 (4) In case of death, the date and place of death.

27 (5) Amendments to applications making claim for compensation  
28 which relate to the same disablement or disablement resulting in  
29 death originally claimed upon may be allowed by the board in its  
30 discretion, and, in the exercise of such discretion, it may, in  
31 proper cases, order a trial de novo. Such amendment shall relate  
32 back to the date of the filing of the original application so  
33 amended.

34 (c) Upon the filing of such application, the board shall set the date  
35 of hearing, which shall be as early as practicable, and shall notify the  
36 parties, in the manner prescribed by the board, of the time and place of  
37 hearing. The hearing of all claims for compensation on account of  
38 occupational disease shall be held in the county in which the last  
39 exposure occurred or in any adjoining county, except when the parties  
40 consent to a hearing elsewhere. Claims assigned to an individual board  
41 member that are considered to be of an emergency nature by that board  
42 member, may be heard in any county within the board member's

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1 jurisdiction.

2 (d) The board by any or all of its members shall hear the parties at  
3 issue, their representatives, and witnesses, and shall determine the  
4 dispute in a summary manner. The award shall be filed with the record  
5 of proceedings, and a copy thereof shall immediately be sent by  
6 registered mail to each of the parties in dispute.

7 (e) If an application for review is made to the board within thirty  
8 (30) days from the date of the award made by less than all the  
9 members, the full board, if the first hearing was not held before the full  
10 board, shall review the evidence, or, if deemed advisable, hear the  
11 parties at issue, their representatives, and witnesses as soon as  
12 practicable, and shall make an award and file the same with the finding  
13 of the facts on which it is based and send a copy thereof to each of the  
14 parties in dispute, in like manner as specified in subsection (d).

15 (f) An award of the board by less than all of the members as  
16 provided in this section, if not reviewed as provided in this section,  
17 shall be final and conclusive. An award by the full board shall be  
18 conclusive and binding unless either party to the dispute, within thirty  
19 (30) days after receiving a copy of such award, appeals to the court of  
20 appeals under the same terms and conditions as govern appeals in  
21 ordinary civil actions. The court of appeals shall have jurisdiction to  
22 review all questions of law and of fact. The board, of its own motion,  
23 may certify questions of law to the court of appeals for its decision and  
24 determination. An assignment of errors that the award of the full board  
25 is contrary to law shall be sufficient to present both the sufficiency of  
26 the facts found to sustain the award and the sufficiency of the evidence  
27 to sustain the finding of facts. All such appeals and certified questions  
28 of law shall be submitted upon the date filed in the court of appeals,  
29 shall be advanced upon the docket of the court, and shall be determined  
30 at the earliest practicable date, without any extensions of time for filing  
31 briefs. An award of the full board affirmed on appeal, by the employer,  
32 shall be increased thereby five percent (5%), and by order of the court  
33 may be increased ten percent (10%).

34 (g) Upon order of the worker's compensation board made after five  
35 (5) days notice is given to the opposite party, any party in interest may  
36 file in the circuit or superior court of the county in which the  
37 disablement occurred a certified copy of the memorandum of  
38 agreement, approved by the board, or of an order or decision of the  
39 board, or of an award of the full board unappealed from, or of an award  
40 of the full board affirmed upon an appeal, whereupon the court shall  
41 render judgment in accordance therewith and notify the parties. Such  
42 judgment shall have the same effect and all proceedings in relation

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1 thereto shall thereafter be the same as though such judgment has been  
2 rendered in a suit duly heard and determined by the court. Any such  
3 judgment of such circuit or superior court, unappealed from or affirmed  
4 on appeal or modified in obedience to the mandate of the court of  
5 appeals, shall be modified to conform to any decision of the industrial  
6 board ending, diminishing, or increasing any weekly payment under the  
7 provisions of subsection (i) upon the presentation to it of a certified  
8 copy of such decision.

9 (h) In all proceedings before the worker's compensation board or in  
10 a court under the compensation provisions of this chapter, the costs  
11 shall be awarded and taxed as provided by law in ordinary civil actions  
12 in the circuit court. **Prejudgment interest shall be awarded at a rate**  
13 **of ten percent (10%) per year accruing from the date of filing of**  
14 **the application for adjustment of claim as determined under**  
15 **subsection (a).**

16 (i) The power and jurisdiction of the worker's compensation board  
17 over each case shall be continuing, and, from time to time, it may, upon  
18 its own motion or upon the application of either party on account of a  
19 change in conditions, make such modification or change in the award  
20 ending, lessening, continuing, or extending the payments previously  
21 awarded, either by agreement or upon hearing, as it may deem just,  
22 subject to the maximum and minimum provided for in this chapter.  
23 When compensation which is payable in accordance with an award or  
24 settlement contract approved by the board is ordered paid in a lump  
25 sum by the board, no review shall be had as in this subsection  
26 mentioned. Upon making any such change, the board shall immediately  
27 send to each of the parties a copy of the modified award. No such  
28 modification shall affect the previous award as to any money paid  
29 thereunder. The board shall not make any such modification upon its  
30 own motion, nor shall any application therefor be filed by either party  
31 after the expiration of two (2) years from the last day for which  
32 compensation was paid under the original award made either by  
33 agreement or upon hearing, except that applications for increased  
34 permanent partial impairment are barred unless filed within one (1)  
35 year from the last day for which compensation was paid. The board  
36 may at any time correct any clerical error in any finding or award.

37 (j) The board or any member thereof may, upon the application of  
38 either party or upon its own motion, appoint a disinterested and duly  
39 qualified physician or surgeon to make any necessary medical  
40 examination of the employee and to testify in respect thereto. Such  
41 physician or surgeon shall be allowed traveling expenses and a  
42 reasonable fee, to be fixed by the board. The fees and expenses of such

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1 physician or surgeon shall be paid by the state only on special order of  
2 the board or a member thereof.

3 (k) The board or any member thereof may, upon the application of  
4 either party or upon its own motion, appoint a disinterested and duly  
5 qualified industrial hygienist, industrial engineer, industrial physician,  
6 or chemist to make any necessary investigation of the occupation in  
7 which the employee alleges that ~~he~~ **the employee** was last exposed to  
8 the hazards of the occupational disease claimed upon, and testify with  
9 respect to the occupational disease health hazards found by such person  
10 or persons to exist in such occupation. Such person or persons shall be  
11 allowed traveling expenses and a reasonable fee, to be fixed by the  
12 board. The fees and expenses of such persons shall be paid by the state,  
13 only on special order of the board or a member thereof.

14 (l) Whenever any claimant misconceives the claimant's remedy and  
15 files an application for adjustment of a claim under IC 22-3-2 through  
16 IC 22-3-6 and it is subsequently discovered, at any time before the final  
17 disposition of such cause, that the claim for injury or death which was  
18 the basis for such application should properly have been made under  
19 the provisions of this chapter, then the application so filed under  
20 IC 22-3-2 through IC 22-3-6 may be amended in form or substance or  
21 both to assert a claim for such disability or death under the provisions  
22 of this chapter, and it shall be deemed to have been so filed as amended  
23 on the date of the original filing thereof, and such compensation may  
24 be awarded as is warranted by the whole evidence pursuant to the  
25 provisions of this chapter. When such amendment is submitted, further  
26 or additional evidence may be heard by the worker's compensation  
27 board when deemed necessary. Nothing in this section contained shall  
28 be construed to be or permit a waiver of any of the provisions of this  
29 chapter with reference to notice or time for filing a claim, but notice of  
30 filing of a claim, if given or done, shall be deemed to be a notice or  
31 filing of a claim under the provisions of this chapter if given or done  
32 within the time required in this chapter.

33 SECTION 10. IC 22-4-14-11 IS AMENDED TO READ AS  
34 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) **Except for**  
35 **benefits due under IC 22-4-15-3.5**, for weeks of unemployment  
36 occurring after October 1, 1983, benefits may be paid to an individual  
37 on the basis of service performed in seasonal employment (as defined  
38 in IC 22-4-8-4) only if the claim is filed within the operating period of  
39 the seasonal employment. If the claim is filed outside the operating  
40 period of the seasonal employment, benefits may be paid on the basis  
41 of nonseasonal wages only.

42 (b) An employer shall file an application for a seasonal

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1 determination (as defined by IC 22-4-7-3) with the department of  
2 workforce development. A seasonal determination shall be made by the  
3 department within ninety (90) days after the filing of such an  
4 application. Until a seasonal determination by the department has been  
5 made in accordance with this section, no employer or worker may be  
6 considered seasonal.

7 (c) Any interested party may file an appeal regarding a seasonal  
8 determination within fifteen (15) calendar days after the determination  
9 by the department and obtain review of the determination in  
10 accordance with IC 22-4-32.

11 (d) Whenever an employer is determined to be a seasonal employer,  
12 the following provisions apply:

13 (1) The seasonal determination becomes effective the first day of  
14 the calendar quarter commencing after the date of the seasonal  
15 determination.

16 (2) The seasonal determination does not affect any benefit rights  
17 of seasonal workers with respect to employment before the  
18 effective date of the seasonal determination.

19 (e) If a seasonal employer, after the date of its seasonal  
20 determination, operates its business or its seasonal operation during a  
21 period or periods of twenty-six (26) weeks or more in a calendar year,  
22 the employer shall be determined by the department to have lost its  
23 seasonal status with respect to that business or operation effective at  
24 the end of the then current calendar quarter. The redetermination shall  
25 be reported in writing to the employer. Any interested party may file an  
26 appeal within fifteen (15) calendar days after the redetermination by  
27 the department and obtain review of the redetermination in accordance  
28 with IC 22-4-32.

29 (f) Seasonal employers shall keep account of wages paid to seasonal  
30 workers within the seasonal period as determined by the department  
31 and shall report these wages on a special seasonal quarterly report form  
32 provided by the department.

33 (g) The board shall adopt rules applicable to seasonal employers for  
34 determining their normal seasonal period or periods.

35 SECTION 11. IC 22-4-15-3 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a) Except as**  
37 **provided in section 3.5 of this chapter,** an individual shall be  
38 ineligible for waiting period or benefit rights for any week with respect  
39 to which ~~his~~ **the individual's** total or partial or part-total  
40 unemployment is due to a labor dispute at the factory, establishment,  
41 or other premises at which ~~he~~ **the individual** was last employed.

42 (b) This section shall not apply to an individual if:

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1           **(1) ~~he~~ the individual** has terminated **his the individual's**  
2           employment, or **his the individual's** employment has been  
3           terminated, with the employer involved in the labor dispute; ~~or if~~  
4           **(2) the labor dispute** which caused **his the individual's**  
5           unemployment has terminated and any period necessary to resume  
6           normal activities at **his the individual's** place of employment has  
7           elapsed; or if  
8           **(3) all of the following conditions exist: He**  
9                **(A) The individual** is not participating in or financing or  
10              directly interested in the labor dispute which caused **his the**  
11              **individual's** unemployment. ~~and he~~  
12              **(B) The individual** does not belong to a grade or class of  
13              workers of which, immediately before the commencement of  
14              **his the individual's** unemployment, there were members  
15              employed at the same premises as ~~he; the individual~~, any of  
16              whom are participating in or financing or directly interested in  
17              the dispute. ~~and he~~  
18              **(C) The individual** has not voluntarily stopped working, other  
19              than at the direction of **his the worker's** employer, in  
20              sympathy with employees in some other establishment or  
21              factory in which a labor dispute is in progress.  
22           (c) If in any case separate branches of work which are commonly  
23           conducted as separate businesses in separate premises are conducted  
24           in separate departments of the same premises, each such department  
25           shall, for the purpose of this section, be deemed to be a separate  
26           factory, establishment, or other premises.  
27           (d) Upon request of any claimant or employer involved in an issue  
28           arising under this section, the deputy shall, and in any other case the  
29           deputy may, refer claims of individuals with respect to whom there is  
30           an issue of the application of this section to an administrative law judge  
31           who shall make the initial determination with respect thereto, in  
32           accordance with the procedure in IC 22-4-17-3.  
33           (e) Notwithstanding any other provisions of this article, an  
34           individual shall not be ineligible for waiting period or benefit rights  
35           under this section solely by reason of **his the individual's** failure or  
36           refusal to apply for or to accept recall to work or reemployment with an  
37           employer during the continuance of a labor dispute at the factory,  
38           establishment, or other premises of the employer, if the individual's last  
39           separation from the employer occurred prior to the start of the labor  
40           dispute and was permanent or for an indefinite period.  
41           SECTION 12. IC 22-4-15-3.5 IS ADDED TO THE INDIANA  
42           CODE AS A NEW SECTION TO READ AS FOLLOWS

COPY



1 [EFFECTIVE JULY 1, 2002]: **Sec. 3.5. (a) As used in this section,**  
 2 **"shuts down operations" means the termination of business by the**  
 3 **employer, whether due to:**

4 (1) a filing of a petition under 11 U.S.C. 501, 11U.S.C. 1201, or  
 5 11U.S.C. 1301; or

6 (2) cessation of business by the employer, whether or not  
 7 dissolution procedures under IC 23-1 have been filed.

8 (b) If the total or partial or part-total unemployment of an  
 9 individual due to a labor dispute at the factory, establishment, or  
 10 other premises at which the individual was last employed ends  
 11 because the employer shuts down business and the individual  
 12 continues to be totally, partially, or part-totaled unemployed, the  
 13 individual is eligible for waiting period or benefit rights retroactive  
 14 to the date of the individual's unemployment due to the labor  
 15 dispute.

16 (c) Any benefits provided by a labor union or other associated  
 17 fund to the individual during the period of the labor dispute, other  
 18 than those provided under IC 22-4-5-1(a)(10), may not be  
 19 considered remuneration for purposes of computing deductible  
 20 income.

21 (d) Any retroactive benefits due to an individual under this  
 22 section shall be limited to the maximum benefit periods provided  
 23 in IC 22-4-12-4.

24 (e) Notwithstanding IC 22-4-14-11, benefits may be paid on the  
 25 basis of service performed in seasonal employment to an individual  
 26 who may be due retroactive benefits under this section who:

27 (1) has engaged in seasonal employment; and

28 (2) has filed a claim for benefits outside the operating period  
 29 of seasonal employment.

30 (f) The provisions of IC 22-4-14-3 apply only after the date that  
 31 the employer shuts down business.

32 (g) The department may use the procedures as prescribed by  
 33 IC 22-4-17-1 for the taking of claims in the instance of mass layoffs  
 34 for claims made under this section.

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