



April 1, 2003

ENGROSSED HOUSE BILL No. 1241

DIGEST OF HB 1241 (Updated March 27, 2003 12:00 PM - DI 102)

Citations Affected: IC 22-3.

Synopsis: Temporary total disability benefit for worker's compensation. Provides that under certain circumstances the worker's compensation board has the authority to recompute the temporary total disability benefit for an employee who sustains a subsequent period of disability resulting from a prior compensable injury or occupational disease.

Effective: July 1, 2003.

Kuzman, Liggett, Pflum

(SENATE SPONSOR — HARRISON)

January 13, 2003, read first time and referred to Committee on Labor and Employment.
February 17, 2003, amended, reported — Do Pass. Recommended to Committee on Ways and Means.

February 27, 2003, reported — Do Pass.

March 3, 2003, read second time, ordered engrossed.

March 4, 2003, engrossed. Read third time, passed. Yeas 63, nays 33.

SENATE ACTION

March 10, 2003, read first time and referred to Committee on Pensions and Labor.

March 31, 2003, amended, reported favorably — Do Pass.

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EH 1241—LS 6902/DI 108+



April 1, 2003

First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1241

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 22-3-3-27 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27. (a) The power and
3 jurisdiction of the worker's compensation board over each case shall be
4 continuing and from time to time it may, upon its own motion or upon
5 the application of either party, on account of a change in conditions,
6 make such modification or change in the award ending, lessening,
7 continuing, or extending the payments previously awarded, either by
8 agreement or upon hearing, as it may deem just, subject to the
9 maximum and minimum provided for in IC 22-3-2 through IC 22-3-6.
10 (b) Upon making any such change, the board shall immediately send
11 to each of the parties a copy of the modified award. No such
12 modification shall affect the previous award as to any money paid
13 thereunder.
14 (c) The board shall not make any such modification upon its own
15 motion nor shall any application therefor be filed by either party after
16 the expiration of two (2) years from the last day for which
17 compensation was paid under the original award made either by

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1 agreement or upon hearing, except that applications for increased
 2 permanent partial impairment are barred unless filed within one (1)
 3 year from the last day for which compensation was paid. The board
 4 may at any time correct any clerical error in any finding or award.

5 **(d) This subsection applies to the modification of a claim arising**
 6 **from a compensable injury that occurs after June 30, 2003. The**
 7 **board has authority, upon application of an employee whose**
 8 **temporary total disability weekly benefit has been previously**
 9 **determined under this article, to recompute the employee's**
 10 **temporary total disability weekly benefit if all the following**
 11 **conditions are met:**

12 **(1) The employee suffers a subsequent period of temporary**
 13 **total disability that occurs at least two (2) years after the later**
 14 **of:**

15 **(A) the date of the initial compensable injury; or**

16 **(B) the last date for which temporary total disability**
 17 **benefits were paid for the initial compensable injury.**

18 **(2) The employee has been continuously employed with the**
 19 **same employer that employed the employee on the date of the**
 20 **employee's initial compensable injury.**

21 **(3) The employee:**

22 **(A) is employed as an apprentice under a contractual**
 23 **provision that provides for a United States Department of**
 24 **Labor approved apprenticeship with scheduled skill and**
 25 **wage advancement over time with each skill level having a**
 26 **higher wage level; and**

27 **(B) has advanced successfully through the skill levels**
 28 **within the periods set forth in the contractual provision.**

29 **(4) The employee's subsequent period of disability is**
 30 **determined by an agreement of the parties or by the board to**
 31 **result from the initial compensable injury.**

32 **(e) A recomputation of the weekly benefit amount under**
 33 **subsection (d) must use the average weekly wage for the fifty-two**
 34 **(52) week period immediately preceding the date on which the**
 35 **subsequent period of temporary total disability described in**
 36 **subsection (d)(1) began.**

37 SECTION 2. IC 22-3-7-27, AS AMENDED BY P.L.235-1999,
 38 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2003]: Sec. 27. (a) If the employer and the employee or the
 40 employee's dependents disagree in regard to the compensation payable
 41 under this chapter, or, if they have reached such an agreement, which
 42 has been signed by them, filed with and approved by the worker's

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1 compensation board, and afterward disagree as to the continuance of
2 payments under such agreement, or as to the period for which payments
3 shall be made, or as to the amount to be paid, because of a change in
4 conditions since the making of such agreement, either party may then
5 make an application to the board for the determination of the matters
6 in dispute. When compensation which is payable in accordance with an
7 award or by agreement approved by the board is ordered paid in a lump
8 sum by the board, no review shall be had as in this subsection
9 mentioned.

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

12 (1) The approximate date of the last day of the last exposure and
13 the approximate date of the disablement.

14 (2) The general nature and character of the illness or disease
15 claimed.

16 (3) The name and address of the employer by whom employed on
17 the last day of the last exposure, and if employed by any other
18 employer after such last exposure and before disablement, the
19 name and address of such other employer or employers.

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

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

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

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

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

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

28 (g) Upon order of the worker's compensation board made after five
29 (5) days notice is given to the opposite party, any party in interest may
30 file in the circuit or superior court of the county in which the
31 disablement occurred a certified copy of the memorandum of
32 agreement, approved by the board, or of an order or decision of the
33 board, or of an award of the full board unappealed from, or of an award
34 of the full board affirmed upon an appeal, whereupon the court shall
35 render judgment in accordance therewith and notify the parties. Such
36 judgment shall have the same effect and all proceedings in relation
37 thereto shall thereafter be the same as though such judgment has been
38 rendered in a suit duly heard and determined by the court. Any such
39 judgment of such circuit or superior court, unappealed from or affirmed
40 on appeal or modified in obedience to the mandate of the court of
41 appeals, shall be modified to conform to any decision of the industrial
42 board ending, diminishing, or increasing any weekly payment under the

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1 provisions of subsection (i) upon the presentation to it of a certified
2 copy of such decision.

3 (h) In all proceedings before the worker's compensation board or in
4 a court under the compensation provisions of this chapter, the costs
5 shall be awarded and taxed as provided by law in ordinary civil actions
6 in the circuit court.

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

28 (j) The board or any member thereof may, upon the application of
29 either party or upon its own motion, appoint a disinterested and duly
30 qualified physician or surgeon to make any necessary medical
31 examination of the employee and to testify in respect thereto. Such
32 physician or surgeon shall be allowed traveling expenses and a
33 reasonable fee, to be fixed by the board. The fees and expenses of such
34 physician or surgeon shall be paid by the state only on special order of
35 the board or a member thereof.

36 (k) The board or any member thereof may, upon the application of
37 either party or upon its own motion, appoint a disinterested and duly
38 qualified industrial hygienist, industrial engineer, industrial physician,
39 or chemist to make any necessary investigation of the occupation in
40 which the employee alleges that he was last exposed to the hazards of
41 the occupational disease claimed upon, and testify with respect to the
42 occupational disease health hazards found by such person or persons



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1 to exist in such occupation. Such person or persons shall be allowed
 2 traveling expenses and a reasonable fee, to be fixed by the board. The
 3 fees and expenses of such persons shall be paid by the state, only on
 4 special order of the board or a member thereof.

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

24 **(m) This subsection applies to the modification of a claim arising**
 25 **from a compensable occupational disease that occurs after June 30,**
 26 **2003. The board has authority, upon application of an employee**
 27 **whose temporary total disability weekly benefit has been**
 28 **previously determined under this article, to recompute the**
 29 **employee's temporary total disability weekly benefit if all the**
 30 **following conditions are met:**

31 **(1) The employee suffers a subsequent period of temporary**
 32 **total disability that occurs at least two (2) years after the later**
 33 **of:**

34 **(A) the date of the initial compensable occupational**
 35 **disease; or**

36 **(B) the last date for which temporary total disability**
 37 **benefits were paid for the initial compensable occupational**
 38 **disease.**

39 **(2) The employee has been continuously employed with the**
 40 **same employer that employed the employee on the date of the**
 41 **employee's initial compensable occupational disease.**

42 **(3) The employee:**

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1 **(A) is employed as an apprentice under a contractual**
2 **provision that provides for a United States Department of**
3 **Labor approved apprenticeship with scheduled skill and**
4 **wage advancement over time with each skill level having a**
5 **higher wage level; and**
6 **(B) has advanced successfully through the skill levels**
7 **within the periods set forth in the contractual provision.**
8 **(4) The employee's subsequent period of disability is**
9 **determined by an agreement of the parties or by the board to**
10 **result from the initial compensable occupational disease.**
11 **(n) A recomputation of the weekly benefit amount under**
12 **subsection (m) must use the average weekly wage for the fifty-two**
13 **(52) week period immediately preceding the date on which the**
14 **subsequent period of temporary total disability described in**
15 **subsection (m)(1) began.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1241, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 16, delete "If" and insert "**In computing the average weekly wage for**".

Page 2, line 16, after "who" insert ":

(1)".

Page 2, line 16, after "injury" insert ";

(2)".

Page 2, line 17, after "work" insert ";

Page 2, line 17, delete "suffers" and begin a new line block indented and insert:

"(3) sustains".

Page 2, line 18, delete "July 1, 2003," and insert "**June 30, 2003;**".

Page 2, line 18, beginning with "the average" begin a new line blocked left.

Page 2, line 18, delete "that" and insert "**the later**".

Page 2, line 19, delete "determined based on" and insert "**the greater of**".

Page 2, line 20, delete "disability" and insert "**compensable injury or the employee's average weekly wage at the time of the later period of disability,**".

Page 2, line 21, after "day" insert "**the employee**".

Page 2, delete lines 25 through 42.

Delete pages 3 through 5.

Page 10, line 11, before "has sustained" delete "who" and insert "**who:**

(1)".

Page 10, line 11, delete "injury," and insert "**injury;**".

Page 10, line 11, before "has returned" delete "who", begin a new line block indented and insert:

"(2)".

Page 10, line 12, delete "work," and insert "**work;**".

Page 10, line 12, delete "who", begin a new line block indented and insert:

"(3)".

Page 10, line 13, delete "July 1, 2003," and insert "**June 30, 2003;**".

Page 10, line 13, beginning with "the" begin a new line blocked left.

Page 10, line 13, delete "that" and insert "**the later**".

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Page 10, line 14, delete "determined based on" and insert "**the greater of**".

Page 10, line 15, delete "disability" and insert "**compensable injury or the employee's average weekly wage at the time of the later period of disability,**".

Page 10, line 16, after "day" insert "**the employee**".

Page 17, line 16, delete "who" and insert "**who:**

(1)".

Page 17, line 17, delete "disease," and insert "**disease;**".

Page 17, line 17, delete "who", begin a new line block indented and insert:

"(2)".

Page 17, line 18, delete "work," and insert "**work;**".

Page 17, line 18, delete "who".

Page 17, line 18, beginning with "has" begin a new line block indented and insert:

"(3)".

Page 17, line 19, delete "July 1, 2003," and insert "**June 30, 2003;**".

Page 17, line 19, beginning with "the" begin a new line blocked left.

Page 17, line 20, delete "that" and insert "**the later**".

Page 17, line 20, delete "determined based on" and insert "**the greater of**".

Page 17, line 21, delete "disability" and insert "**compensable occupational disease or the employee's average weekly wage at the time of the later period of disability,**".

Page 17, line 22, after "day" insert "**the employee**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1241 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 4.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1241, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 25, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1241, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1241 as printed February 28, 2003.)

HARRISON, Chairperson

Committee Vote: Yeas 9, Nays 0.

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