



February 28, 2003

HOUSE BILL No. 1241

DIGEST OF HB 1241 (Updated February 27, 2003 10:03 AM - DI 51)

Citations Affected: IC 22-3.

Synopsis: Average weekly wage for worker's compensation. Modifies the average weekly wage for an employee who sustains a compensable injury or occupational disease after June 30, 2003, when the employee has returned to work after a prior period of disability.

Effective: July 1, 2003.

Kuzman, Liggett, Pflum

January 13, 2003, read first time and referred to Committee on Labor and Employment.
February 17, 2003, amended, reported — Do Pass. Recommitted to Committee on Ways and Means.
February 27, 2003, reported — Do Pass.

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HB 1241—LS 6902/DI 108+



February 28, 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.

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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 22-3-3-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 8. With respect to injuries occurring
3 prior to April 1, 1951, causing temporary total disability for work, there
4 shall be paid to the injured employee during such total disability for
5 work a weekly compensation equal to fifty-five percent (55%) of **his**
6 **the injured employee's** average weekly wages for a period not to
7 exceed five hundred (500) weeks. With respect to injuries occurring on
8 and after April 1, 1951, and prior to July 1, 1971, causing temporary
9 total disability for work, there shall be paid to the injured employee
10 during such total disability a weekly compensation equal to sixty
11 percent (60%) of ~~his~~ **the injured employee's** average weekly wages for
12 a period not to exceed five hundred (500) weeks. With respect to
13 injuries occurring on and after July 1, 1971, and prior to July 1, 1974,
14 causing temporary total disability for work, there shall be paid to the
15 injured employee during such total disability a weekly compensation
16 equal to sixty percent (60%) of ~~his~~ **the injured employee's** average
17 weekly wages, as defined in ~~IC 22-3-3-22~~ **section 22 of this chapter,**

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1 a period not to exceed five hundred (500) weeks. With respect to
 2 injuries occurring on and after July 1, 1974, and before July 1, 1976,
 3 causing temporary total disability or total permanent disability for
 4 work, there shall be paid to the injured employee during such total
 5 disability a weekly compensation equal to sixty-six and two-thirds
 6 percent (66 2/3%) of ~~his~~ **the injured employee's** average weekly
 7 wages up to one hundred ~~and~~ thirty-five dollars (~~\$135.00~~) (**\$135**)
 8 average weekly wages, as defined in section 22 of this chapter, for a
 9 period not to exceed five hundred (500) weeks. With respect to injuries
 10 occurring on and after July 1, 1976, causing temporary total disability
 11 or total permanent disability for work, there shall be paid to the injured
 12 employee during the total disability a weekly compensation equal to
 13 sixty-six and two-thirds percent (66 2/3%) of ~~his~~ **the injured**
 14 **employee's** average weekly wages, as defined in ~~IC 22-3-3-22, section~~
 15 **22 of this chapter**, for a period not to exceed five hundred (500)
 16 weeks. **In computing the average weekly wage for an employee**
 17 **who:**

- 18 (1) has sustained a compensable injury;
- 19 (2) returns to work; and
- 20 (3) sustains a later period of disability due to that injury after
 21 June 30, 2003;

22 **the average weekly wage for the later period of disability shall be**
 23 **the greater of the employee's average weekly wage at the time of**
 24 **the compensable injury or the employee's average weekly wage at**
 25 **the time of the later period of disability, subject to the maximum**
 26 **average weekly wage in effect as of the last day the employee**
 27 **worked, computed as set forth in section 22 of this chapter.**
 28 Compensation shall be allowed for the first seven (7) calendar days
 29 only if the disability continues for longer than twenty-one (21) days.

30 SECTION 2. IC 22-3-6-1, AS AMENDED BY P.L.202-2001,
 31 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2003]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the
 33 context otherwise requires:

34 (a) "Employer" includes the state and any political subdivision, any
 35 municipal corporation within the state, any individual or the legal
 36 representative of a deceased individual, firm, association, limited
 37 liability company, or corporation or the receiver or trustee of the same,
 38 using the services of another for pay. A parent corporation and its
 39 subsidiaries shall each be considered joint employers of the
 40 corporation's, the parent's, or the subsidiaries' employees for purposes
 41 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of
 42 employees shall each be considered joint employers of the employees



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1 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and
2 IC 22-3-3-31. If the employer is insured, the term includes the
3 employer's insurer so far as applicable. However, the inclusion of an
4 employer's insurer within this definition does not allow an employer's
5 insurer to avoid payment for services rendered to an employee with the
6 approval of the employer. The term also includes an employer that
7 provides on-the-job training under the federal School to Work
8 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in
9 IC 22-3-2-2.5.

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

15 (1) An executive officer elected or appointed and empowered in
16 accordance with the charter and bylaws of a corporation, other
17 than a municipal corporation or governmental subdivision or a
18 charitable, religious, educational, or other nonprofit corporation,
19 is an employee of the corporation under IC 22-3-2 through
20 IC 22-3-6.

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

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

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

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1 been received. If the owner of a sole proprietorship is an
 2 independent contractor in the construction trades and does not
 3 make the election provided under this subdivision, the owner
 4 must obtain an affidavit of exemption under IC 22-3-2-14.5.

5 (5) A partner in a partnership may elect to include the partner as
 6 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
 7 actually engaged in the partnership business. If a partner makes
 8 this election, the partner must serve upon the partner's insurance
 9 carrier and upon the board written notice of the election. No
 10 partner may be considered an employee under IC 22-3-2 through
 11 IC 22-3-6 until the notice has been received. If a partner in a
 12 partnership is an independent contractor in the construction trades
 13 and does not make the election provided under this subdivision,
 14 the partner must obtain an affidavit of exemption under
 15 IC 22-3-2-14.5.

16 (6) Real estate professionals are not employees under IC 22-3-2
 17 through IC 22-3-6 if:

18 (A) they are licensed real estate agents;

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

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

24 (7) A person is an independent contractor in the construction
 25 trades and not an employee under IC 22-3-2 through IC 22-3-6 if
 26 the person is an independent contractor under the guidelines of
 27 the United States Internal Revenue Service.

28 (8) An owner-operator that provides a motor vehicle and the
 29 services of a driver under a written contract that is subject to
 30 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
 31 carrier is not an employee of the motor carrier for purposes of
 32 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be
 33 covered and have the owner-operator's drivers covered under a
 34 worker's compensation insurance policy or authorized
 35 self-insurance that insures the motor carrier if the owner-operator
 36 pays the premiums as requested by the motor carrier. An election
 37 by an owner-operator under this subdivision does not terminate
 38 the independent contractor status of the owner-operator for any
 39 purpose other than the purpose of this subdivision.

40 (9) A member or manager in a limited liability company may elect
 41 to include the member or manager as an employee under
 42 IC 22-3-2 through IC 22-3-6 if the member or manager is actually

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1 engaged in the limited liability company business. If a member or
2 manager makes this election, the member or manager must serve
3 upon the member's or manager's insurance carrier and upon the
4 board written notice of the election. A member or manager may
5 not be considered an employee under IC 22-3-2 through IC 22-3-6
6 until the notice has been received.

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

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

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

15 (2) If the employee is a minor who, at the time of the accident, is
16 employed, required, suffered, or permitted to work in violation of
17 IC 20-8.1-4-25, the amount of compensation and death benefits,
18 as provided in IC 22-3-2 through IC 22-3-6, shall be double the
19 amount which would otherwise be recoverable. The insurance
20 carrier shall be liable on its policy for one-half (1/2) of the
21 compensation or benefits that may be payable on account of the
22 injury or death of the minor, and the employer shall be liable for
23 the other one-half (1/2) of the compensation or benefits. If the
24 employee is a minor who is not less than sixteen (16) years of age
25 and who has not reached seventeen (17) years of age and who at
26 the time of the accident is employed, suffered, or permitted to
27 work at any occupation which is not prohibited by law, this
28 subdivision does not apply.

29 (3) A minor employee who, at the time of the accident, is a
30 student performing services for an employer as part of an
31 approved program under IC 20-10.1-6-7 shall be considered a
32 full-time employee for the purpose of computing compensation
33 for permanent impairment under IC 22-3-3-10. The average
34 weekly wages for such a student shall be calculated as provided
35 in subsection (d)(4).

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

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

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

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

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

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

- (A) the student employee's hourly wage rate; multiplied by
- (B) forty (40) hours.

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

(5) In computing the average weekly wage for an employee who:

- (1) has sustained a compensable injury;**
- (2) has returned to work; and**

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1 **(3) has a later period of disability due to that injury after June**
 2 **30, 2003;**

3 **the average weekly wage for the later period of disability shall be**
 4 **the greater of the average weekly wage at the time of that**
 5 **compensable injury or the employee's average weekly wage at the**
 6 **time of the later period of disability, subject to the maximum**
 7 **average weekly wage in effect as of the last day the employee**
 8 **worked, computed as set forth in IC 22-3-3-22.**

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

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

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

19 (h) "Community" means a geographic service area based on zip
 20 code districts defined by the United States Postal Service according to
 21 the following groupings:

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

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

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

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

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

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

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

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

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

41 (j) "Pecuniary liability" means the responsibility of an employer or
 42 the employer's insurance carrier for the payment of the charges for each

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1 specific service or product for human medical treatment provided
 2 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
 3 less than the charges made by medical service providers at the eightieth
 4 percentile in the same community for like services or products.

5 SECTION 3. IC 22-3-7-19, AS AMENDED BY P.L.31-2000,
 6 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2003]: Sec. 19. (a) In computing compensation for temporary
 8 total disability, temporary partial disability, and total permanent
 9 disability under this law with respect to occupational diseases
 10 occurring:

11 (1) on and after July 1, 1974, and before July 1, 1976, the average
 12 weekly wages shall be considered to be:

13 (A) not more than one hundred thirty-five dollars (\$135); and

14 (B) not less than seventy-five dollars (\$75);

15 (2) on and after July 1, 1976, and before July 1, 1977, the average
 16 weekly wages shall be considered to be:

17 (A) not more than one hundred fifty-six dollars (\$156); and

18 (B) not less than seventy-five dollars (\$75);

19 (3) on and after July 1, 1977, and before July 1, 1979, the average
 20 weekly wages are considered to be:

21 (A) not more than one hundred eighty dollars (\$180); and

22 (B) not less than seventy-five dollars (\$75);

23 (4) on and after July 1, 1979, and before July 1, 1980, the average
 24 weekly wages are considered to be:

25 (A) not more than one hundred ninety-five dollars (\$195); and

26 (B) not less than seventy-five dollars (\$75);

27 (5) on and after July 1, 1980, and before July 1, 1983, the average
 28 weekly wages are considered to be:

29 (A) not more than two hundred ten dollars (\$210); and

30 (B) not less than seventy-five dollars (\$75);

31 (6) on and after July 1, 1983, and before July 1, 1984, the average
 32 weekly wages are considered to be:

33 (A) not more than two hundred thirty-four dollars (\$234); and

34 (B) not less than seventy-five dollars (\$75); and

35 (7) on and after July 1, 1984, and before July 1, 1985, the average
 36 weekly wages are considered to be:

37 (A) not more than two hundred forty-nine dollars (\$249); and

38 (B) not less than seventy-five dollars (\$75).

39 (b) In computing compensation for temporary total disability,
 40 temporary partial disability, and total permanent disability, with respect
 41 to occupational diseases occurring on and after July 1, 1985, and before
 42 July 1, 1986, the average weekly wages are considered to be:

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- 1 (1) not more than two hundred sixty-seven dollars (\$267); and
2 (2) not less than seventy-five dollars (\$75).
- 3 (c) In computing compensation for temporary total disability,
4 temporary partial disability, and total permanent disability, with respect
5 to occupational diseases occurring on and after July 1, 1986, and before
6 July 1, 1988, the average weekly wages are considered to be:
7 (1) not more than two hundred eighty-five dollars (\$285); and
8 (2) not less than seventy-five dollars (\$75).
- 9 (d) In computing compensation for temporary total disability,
10 temporary partial disability, and total permanent disability, with respect
11 to occupational diseases occurring on and after July 1, 1988, and before
12 July 1, 1989, the average weekly wages are considered to be:
13 (1) not more than three hundred eighty-four dollars (\$384); and
14 (2) not less than seventy-five dollars (\$75).
- 15 (e) In computing compensation for temporary total disability,
16 temporary partial disability, and total permanent disability, with respect
17 to occupational diseases occurring on and after July 1, 1989, and before
18 July 1, 1990, the average weekly wages are considered to be:
19 (1) not more than four hundred eleven dollars (\$411); and
20 (2) not less than seventy-five dollars (\$75).
- 21 (f) In computing compensation for temporary total disability,
22 temporary partial disability, and total permanent disability, with respect
23 to occupational diseases occurring on and after July 1, 1990, and before
24 July 1, 1991, the average weekly wages are considered to be:
25 (1) not more than four hundred forty-one dollars (\$441); and
26 (2) not less than seventy-five dollars (\$75).
- 27 (g) In computing compensation for temporary total disability,
28 temporary partial disability, and total permanent disability, with respect
29 to occupational diseases occurring on and after July 1, 1991, and before
30 July 1, 1992, the average weekly wages are considered to be:
31 (1) not more than four hundred ninety-two dollars (\$492); and
32 (2) not less than seventy-five dollars (\$75).
- 33 (h) In computing compensation for temporary total disability,
34 temporary partial disability, and total permanent disability, with respect
35 to occupational diseases occurring on and after July 1, 1992, and before
36 July 1, 1993, the average weekly wages are considered to be:
37 (1) not more than five hundred forty dollars (\$540); and
38 (2) not less than seventy-five dollars (\$75).
- 39 (i) In computing compensation for temporary total disability,
40 temporary partial disability, and total permanent disability, with respect
41 to occupational diseases occurring on and after July 1, 1993, and before
42 July 1, 1994, the average weekly wages are considered to be:

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- 1 (1) not more than five hundred ninety-one dollars (\$591); and
 2 (2) not less than seventy-five dollars (\$75).
- 3 (j) In computing compensation for temporary total disability,
 4 temporary partial disability, and total permanent disability, with respect
 5 to occupational diseases occurring on and after July 1, 1994, and before
 6 July 1, 1997, the average weekly wages are considered to be:
 7 (1) not more than six hundred forty-two dollars (\$642); and
 8 (2) not less than seventy-five dollars (\$75).
- 9 (k) In computing compensation for temporary total disability,
 10 temporary partial disability, and total permanent disability, the average
 11 weekly wages are considered to be:
 12 (1) with respect to occupational diseases occurring on and after
 13 July 1, 1997, and before July 1, 1998:
 14 (A) not more than six hundred seventy-two dollars (\$672); and
 15 (B) not less than seventy-five dollars (\$75);
 16 (2) with respect to occupational diseases occurring on and after
 17 July 1, 1998, and before July 1, 1999:
 18 (A) not more than seven hundred two dollars (\$702); and
 19 (B) not less than seventy-five dollars (\$75);
 20 (3) with respect to occupational diseases occurring on and after
 21 July 1, 1999, and before July 1, 2000:
 22 (A) not more than seven hundred thirty-two dollars (\$732);
 23 and
 24 (B) not less than seventy-five dollars (\$75);
 25 (4) with respect to occupational diseases occurring on and after
 26 July 1, 2000, and before July 1, 2001:
 27 (A) not more than seven hundred sixty-two dollars (\$762); and
 28 (B) not less than seventy-five dollars (\$75);
 29 (5) with respect to disablements occurring on and after July 1,
 30 2001, and before July 1, 2002:
 31 (A) not more than eight hundred twenty-two dollars (\$822);
 32 and
 33 (B) not less than seventy-five dollars (\$75); and
 34 (6) with respect to disablements occurring on and after July 1,
 35 2002:
 36 (A) not more than eight hundred eighty-two dollars (\$882);
 37 and
 38 (B) not less than seventy-five dollars (\$75).
- 39 (l) The maximum compensation that shall be paid for occupational
 40 disease and its results under any one (1) or more provisions of this
 41 chapter with respect to disability or death occurring:
 42 (1) on and after July 1, 1974, and before July 1, 1976, shall not

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1 exceed forty-five thousand dollars (\$45,000) in any case;
 2 (2) on and after July 1, 1976, and before July 1, 1977, shall not
 3 exceed fifty-two thousand dollars (\$52,000) in any case;
 4 (3) on and after July 1, 1977, and before July 1, 1979, may not
 5 exceed sixty thousand dollars (\$60,000) in any case;
 6 (4) on and after July 1, 1979, and before July 1, 1980, may not
 7 exceed sixty-five thousand dollars (\$65,000) in any case;
 8 (5) on and after July 1, 1980, and before July 1, 1983, may not
 9 exceed seventy thousand dollars (\$70,000) in any case;
 10 (6) on and after July 1, 1983, and before July 1, 1984, may not
 11 exceed seventy-eight thousand dollars (\$78,000) in any case; and
 12 (7) on and after July 1, 1984, and before July 1, 1985, may not
 13 exceed eighty-three thousand dollars (\$83,000) in any case.

14 (m) The maximum compensation with respect to disability or death
 15 occurring on and after July 1, 1985, and before July 1, 1986, which
 16 shall be paid for occupational disease and the results thereof under the
 17 provisions of this chapter or under any combination of its provisions
 18 may not exceed eighty-nine thousand dollars (\$89,000) in any case.
 19 The maximum compensation with respect to disability or death
 20 occurring on and after July 1, 1986, and before July 1, 1988, which
 21 shall be paid for occupational disease and the results thereof under the
 22 provisions of this chapter or under any combination of its provisions
 23 may not exceed ninety-five thousand dollars (\$95,000) in any case. The
 24 maximum compensation with respect to disability or death occurring
 25 on and after July 1, 1988, and before July 1, 1989, that shall be paid for
 26 occupational disease and the results thereof under this chapter or under
 27 any combination of its provisions may not exceed one hundred
 28 twenty-eight thousand dollars (\$128,000) in any case.

29 (n) The maximum compensation with respect to disability or death
 30 occurring on and after July 1, 1989, and before July 1, 1990, that shall
 31 be paid for occupational disease and the results thereof under this
 32 chapter or under any combination of its provisions may not exceed one
 33 hundred thirty-seven thousand dollars (\$137,000) in any case.

34 (o) The maximum compensation with respect to disability or death
 35 occurring on and after July 1, 1990, and before July 1, 1991, that shall
 36 be paid for occupational disease and the results thereof under this
 37 chapter or under any combination of its provisions may not exceed one
 38 hundred forty-seven thousand dollars (\$147,000) in any case.

39 (p) The maximum compensation with respect to disability or death
 40 occurring on and after July 1, 1991, and before July 1, 1992, that shall
 41 be paid for occupational disease and the results thereof under this
 42 chapter or under any combination of the provisions of this chapter may

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not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) The maximum compensation with respect to disability or death occurring on and after July 1, 1992, and before July 1, 1993, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

(r) The maximum compensation with respect to disability or death occurring on and after July 1, 1993, and before July 1, 1994, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(s) The maximum compensation with respect to disability or death occurring on and after July 1, 1994, and before July 1, 1997, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(t) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter may not exceed the following amounts in any case:

- (1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).
- (2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).
- (3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).
- (4) With respect to disability or death occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).
- (5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).
- (6) With respect to disability or death occurring on and after July 1, 2002, two hundred ninety-four thousand dollars (\$294,000).

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the

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1 employment in which the employee was working at the time of the last
2 exposure during the period of fifty-two (52) weeks immediately
3 preceding the last day of the last exposure divided by fifty-two (52). If
4 the employee lost seven (7) or more calendar days during the period,
5 although not in the same week, then the earnings for the remainder of
6 the fifty-two (52) weeks shall be divided by the number of weeks and
7 parts thereof remaining after the time lost has been deducted. Where
8 the employment prior to the last day of the last exposure extended over
9 a period of less than fifty-two (52) weeks, the method of dividing the
10 earnings during that period by the number of weeks and parts thereof
11 during which the employee earned wages shall be followed if results
12 just and fair to both parties will be obtained. Where by reason of the
13 shortness of the time during which the employee has been in the
14 employment of the employer or of the casual nature or terms of the
15 employment it is impracticable to compute the average weekly wages
16 as above defined, regard shall be had to the average weekly amount
17 which, during the fifty-two (52) weeks previous to the last day of the
18 last exposure, was being earned by a person in the same grade
19 employed at the same work by the same employer, or if there is no
20 person so employed, by a person in the same grade employed in that
21 same class of employment in the same district. Whenever allowances
22 of any character are made to an employee in lieu of wages or a
23 specified part of the wage contract, they shall be deemed a part of the
24 employee's earnings.

25 (v) For all disabilities occurring on and after July 1, 1985, "average
26 weekly wages" means the earnings of the injured employee during the
27 period of fifty-two (52) weeks immediately preceding the disability
28 divided by fifty-two (52). If the employee lost seven (7) or more
29 calendar days during the period, although not in the same week, then
30 the earnings for the remainder of the fifty-two (52) weeks shall be
31 divided by the number of weeks and parts of weeks remaining after the
32 time lost has been deducted. If employment before the date of disability
33 extended over a period of less than fifty-two (52) weeks, the method of
34 dividing the earnings during that period by the number of weeks and
35 parts of weeks during which the employee earned wages shall be
36 followed if results just and fair to both parties will be obtained. If by
37 reason of the shortness of the time during which the employee has been
38 in the employment of the employer or of the casual nature or terms of
39 the employment it is impracticable to compute the average weekly
40 wages for the employee, the employee's average weekly wages shall be
41 considered to be the average weekly amount that, during the fifty-two
42 (52) weeks before the date of disability, was being earned by a person

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1 in the same grade employed at the same work by the same employer or,
2 if there is no person so employed, by a person in the same grade
3 employed in that same class of employment in the same district.
4 Whenever allowances of any character are made to an employee
5 instead of wages or a specified part of the wage contract, they shall be
6 considered a part of the employee's earnings.

7 (w) **In computing the average weekly wage for an employee**
8 **who:**

- 9 (1) **has sustained a compensable occupational disease;**
- 10 (2) **has returned to work; and**
- 11 (3) **has a later period of disability due to that occupational**
- 12 **disease after June 30, 2003;**

13 **the average weekly wage for the later period of disability shall be**
14 **the greater of the average weekly wage at the time of that**
15 **compensable occupational disease or the employee's average**
16 **weekly wage at the time of the later period of disability, subject to**
17 **the maximum average weekly wage in effect as of the last day the**
18 **employee worked, computed as set forth in this section.**

19 (x) The provisions of this article may not be construed to result in
20 an award of benefits in which the number of weeks paid or to be paid
21 for temporary total disability, temporary partial disability, or permanent
22 total disability benefits combined exceeds five hundred (500) weeks.
23 This section shall not be construed to prevent a person from applying
24 for an award under IC 22-3-3-13. However, in case of permanent total
25 disability resulting from a disablement occurring on or after January 1,
26 1998, the minimum total benefit shall not be less than seventy-five
27 thousand dollars (\$75,000).

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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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