

# HOUSE BILL No. 1241

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## DIGEST OF INTRODUCED BILL

**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 a prior period of disability. Provides a credit for second injury fund assessments to an employer who pays increased benefits because of the modification.

**Effective:** July 1, 2003.

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## Kuzman, Liggett

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January 13, 2003, read first time and referred to Committee on Labor and Employment.

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Introduced

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,**



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. **If an employee who has sustained a compensable injury**  
 17 **returns to work and suffers a later period of disability due to that**  
 18 **injury after July 1, 2003, the average weekly wage for that period**  
 19 **of disability shall be determined based on the employee's average**  
 20 **weekly wage at the time of the disability subject to the maximum**  
 21 **average weekly wage in effect as of the last day worked, computed**  
 22 **as set forth in section 22 of this chapter.** Compensation shall be  
 23 allowed for the first seven (7) calendar days only if the disability  
 24 continues for longer than twenty-one (21) days.

25 SECTION 2. IC 22-3-3-13, AS AMENDED BY P.L.202-2001,  
 26 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2003]: Sec. 13. (a) As used in this section, "board" refers to  
 28 the worker's compensation board created under IC 22-3-1-1.

29 (b) If an employee who from any cause had lost, or lost the use of,  
 30 one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and  
 31 in a subsequent industrial accident becomes permanently and totally  
 32 disabled by reason of the loss, or loss of use of, another such member  
 33 or eye, the employer shall be liable only for the compensation payable  
 34 for such second injury. However, in addition to such compensation and  
 35 after the completion of the payment therefor, the employee shall be  
 36 paid the remainder of the compensation that would be due for such  
 37 total permanent disability out of a special fund known as the second  
 38 injury fund, and created in the manner described in subsection (c).

39 (c) Whenever the board determines under the procedures set forth  
 40 in subsection (d) that an assessment is necessary to ensure that fund  
 41 beneficiaries, including applicants under section 4(e) of this chapter,  
 42 continue to receive compensation in a timely manner for a reasonable



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1 prospective period, the board shall send notice not later than October  
2 1 in any year to:

3 (1) all insurance carriers and other entities insuring or providing  
4 coverage to employers who are or may be liable under this article  
5 to pay compensation for personal injuries to or the death of their  
6 employees under this article; and

7 (2) each employer carrying the employer's own risk;

8 stating that an assessment is necessary. After June 30, 1999, the board  
9 may conduct an assessment under this subsection not more than one (1)  
10 time annually. Every insurance carrier and other entity insuring or  
11 providing coverage to employers who are or may be liable under this  
12 article to pay compensation for personal injuries to or death of their  
13 employees under this article and every employer carrying the  
14 employer's own risk, shall, within thirty (30) days of the board sending  
15 notice under this subsection, pay to the worker's compensation board  
16 for the benefit of the fund an assessed amount that may not exceed two  
17 and one-half percent (2.5%) of the total amount of all worker's  
18 compensation paid to injured employees or their beneficiaries under  
19 IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the  
20 due date of such payment. For the purposes of calculating the  
21 assessment under this subsection, the board may consider payments for  
22 temporary total disability, temporary partial disability, permanent total  
23 impairment, permanent partial impairment, or death of an employee.  
24 The board may not consider payments for medical benefits in  
25 calculating an assessment under this subsection. If the amount to the  
26 credit of the second injury fund on or before October 1 of any year  
27 exceeds one million dollars (\$1,000,000), the assessment allowed  
28 under this subsection shall not be assessed or collected during the  
29 ensuing year. But when on or before October 1 of any year the amount  
30 to the credit of the fund is less than one million dollars (\$1,000,000),  
31 the payments of not more than two and one-half percent (2.5%) of the  
32 total amount of all worker's compensation paid to injured employees or  
33 their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar  
34 year next preceding that date shall be resumed and paid into the fund.  
35 The board may not use an assessment rate greater than twenty-five  
36 hundredths of one percent (0.25%) above the amount recommended by  
37 the study performed before the assessment. **All entities liable for and**  
38 **paying an assessment under this subsection are entitled to a credit**  
39 **against the assessment for the payments made the same year on**  
40 **which the assessment was based. These payments must have been**  
41 **made to an employee who was injured before January 1, 2004, and**  
42 **who had a later period of disability entitling the employee to an**

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1 **increase in the average weekly wage, as set forth in section 8 of this**  
 2 **chapter. Any credit due shall be computed by the following**  
 3 **formula:**

4 **STEP ONE: Determine the amount of compensation the**  
 5 **employee actually received based on the average weekly wage**  
 6 **as of the last day worked before the later period of disability.**

7 **STEP TWO: Determine the amount of compensation the**  
 8 **employee would have received based on the average weekly**  
 9 **wage at the time of the original compensable injury.**

10 **STEP THREE: Determine the greater of zero (0) or the result**  
 11 **of:**

12 **(A) the STEP ONE amount; minus**

13 **(B) the STEP TWO amount.**

14 (d) The board shall enter into a contract with an actuary or another  
 15 qualified firm that has experience in calculating worker's compensation  
 16 liabilities. Not later than September 1 of each year, the actuary or other  
 17 qualified firm shall calculate the recommended funding level of the  
 18 fund based on the previous year's claims and inform the board of the  
 19 results of the calculation. If the amount to the credit of the fund is less  
 20 than the amount required under subsection (c), the board may conduct  
 21 an assessment under subsection (c). The board shall pay the costs of the  
 22 contract under this subsection with money in the fund.

23 (e) An assessment collected under subsection (c) on an employer  
 24 who is not self-insured must be assessed through a surcharge based on  
 25 the employer's premium. An assessment collected under subsection (c)  
 26 does not constitute an element of loss, but for the purpose of collection  
 27 shall be treated as a separate cost imposed upon insured employers. A  
 28 premium surcharge under this subsection must be collected at the same  
 29 time and in the same manner in which the premium for coverage is  
 30 collected, and must be shown as a separate amount on a premium  
 31 statement. A premium surcharge under this subsection must be  
 32 excluded from the definition of premium for all purposes, including the  
 33 computation of agent commissions or premium taxes. However, an  
 34 insurer may cancel a worker's compensation policy for nonpayment of  
 35 the premium surcharge. A cancellation under this subsection must be  
 36 carried out under the statutes applicable to the nonpayment of  
 37 premiums.

38 (f) The sums shall be paid by the board to the treasurer of state, to  
 39 be deposited in a special account known as the second injury fund. The  
 40 funds are not a part of the general fund of the state. Any balance  
 41 remaining in the account at the end of any fiscal year shall not revert  
 42 to the general fund. The funds shall be used only for the payment of

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1 awards of compensation and expense of medical examinations or  
 2 treatment made and ordered by the board and chargeable against the  
 3 fund pursuant to this section, and shall be paid for that purpose by the  
 4 treasurer of state upon award or order of the board.

5 (g) If an employee who is entitled to compensation under IC 22-3-2  
 6 through IC 22-3-6 either:

7 (1) exhausts the maximum benefits under section 22 of this  
 8 chapter without having received the full amount of award granted  
 9 to the employee under section 10 of this chapter; or

10 (2) exhausts the employee's benefits under section 10 of this  
 11 chapter;

12 then such employee may apply to the board, who may award the  
 13 employee compensation from the second injury fund established by this  
 14 section, as follows under subsection (h).

15 (h) An employee who has exhausted the employee's maximum  
 16 benefits under section 10 of this chapter may be awarded additional  
 17 compensation equal to sixty-six and two-thirds percent (66 2/3%) of the  
 18 employee's average weekly wage at the time of the employee's injury,  
 19 not to exceed the maximum then applicable under section 22 of this  
 20 chapter, for a period of not to exceed one hundred fifty (150) weeks  
 21 upon competent evidence sufficient to establish:

22 (1) that the employee is totally and permanently disabled from  
 23 causes and conditions of which there are or have been objective  
 24 conditions and symptoms proven that are not within the physical  
 25 or mental control of the employee; and

26 (2) that the employee is unable to support the employee in any  
 27 gainful employment, not associated with rehabilitative or  
 28 vocational therapy.

29 (i) The additional award may be renewed during the employee's total  
 30 and permanent disability after appropriate hearings by the board for  
 31 successive periods not to exceed one hundred fifty (150) weeks each.  
 32 The provisions of this section apply only to injuries occurring  
 33 subsequent to April 1, 1950, for which awards have been or are in the  
 34 future made by the board under section 10 of this chapter. Section 16  
 35 of this chapter does not apply to compensation awarded from the  
 36 second injury fund under this section.

37 (j) All insurance carriers subject to an assessment under this section  
 38 are required to provide to the board:

39 (1) not later than January 31 each calendar year; and

40 (2) not later than thirty (30) days after a change occurs;

41 the name, address, and electronic mail address of a representative  
 42 authorized to receive the notice of an assessment.

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

5 (a) "Employer" includes the state and any political subdivision, any  
 6 municipal corporation within the state, any individual or the legal  
 7 representative of a deceased individual, firm, association, limited  
 8 liability company, or corporation or the receiver or trustee of the same,  
 9 using the services of another for pay. A parent corporation and its  
 10 subsidiaries shall each be considered joint employers of the  
 11 corporation's, the parent's, or the subsidiaries' employees for purposes  
 12 of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of  
 13 employees shall each be considered joint employers of the employees  
 14 provided by the lessor to the lessee for purposes of IC 22-3-2-6 and  
 15 IC 22-3-3-31. If the employer is insured, the term includes the  
 16 employer's insurer so far as applicable. However, the inclusion of an  
 17 employer's insurer within this definition does not allow an employer's  
 18 insurer to avoid payment for services rendered to an employee with the  
 19 approval of the employer. The term also includes an employer that  
 20 provides on-the-job training under the federal School to Work  
 21 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in  
 22 IC 22-3-2-2.5.

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

28 (1) An executive officer elected or appointed and empowered in  
 29 accordance with the charter and bylaws of a corporation, other  
 30 than a municipal corporation or governmental subdivision or a  
 31 charitable, religious, educational, or other nonprofit corporation,  
 32 is an employee of the corporation under IC 22-3-2 through  
 33 IC 22-3-6.

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

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

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1 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor  
 2 carrier is not an employee of the motor carrier for purposes of  
 3 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be  
 4 covered and have the owner-operator's drivers covered under a  
 5 worker's compensation insurance policy or authorized  
 6 self-insurance that insures the motor carrier if the owner-operator  
 7 pays the premiums as requested by the motor carrier. An election  
 8 by an owner-operator under this subdivision does not terminate  
 9 the independent contractor status of the owner-operator for any  
 10 purpose other than the purpose of this subdivision.

11 (9) A member or manager in a limited liability company may elect  
 12 to include the member or manager as an employee under  
 13 IC 22-3-2 through IC 22-3-6 if the member or manager is actually  
 14 engaged in the limited liability company business. If a member or  
 15 manager makes this election, the member or manager must serve  
 16 upon the member's or manager's insurance carrier and upon the  
 17 board written notice of the election. A member or manager may  
 18 not be considered an employee under IC 22-3-2 through IC 22-3-6  
 19 until the notice has been received.

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

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

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

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

42 (3) A minor employee who, at the time of the accident, is a

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1 student performing services for an employer as part of an  
2 approved program under IC 20-10.1-6-7 shall be considered a  
3 full-time employee for the purpose of computing compensation  
4 for permanent impairment under IC 22-3-3-10. The average  
5 weekly wages for such a student shall be calculated as provided  
6 in subsection (d)(4).

7 (4) The rights and remedies granted in this subsection to a minor  
8 under IC 22-3-2 through IC 22-3-6 on account of personal injury  
9 or death by accident shall exclude all rights and remedies of the  
10 minor, the minor's parents, or the minor's personal  
11 representatives, dependents, or next of kin at common law,  
12 statutory or otherwise, on account of the injury or death. This  
13 subsection does not apply to minors who have reached seventeen  
14 (17) years of age.

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

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

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

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

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

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

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

10 **(5) In computing the average weekly wage for an employee**  
 11 **who has sustained a compensable injury, who has returned to**  
 12 **work, and who has a later period of disability due to that**  
 13 **injury after July 1, 2003, the average weekly wage for that**  
 14 **period of disability shall be determined based on the average**  
 15 **weekly wage at the time of that disability subject to the**  
 16 **maximum average weekly wage in effect as of the last day**  
 17 **worked, computed as set forth in IC 22-3-3-22.**

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

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

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

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

- 31 (1) The geographic service area served by zip codes with the first  
 32 three (3) digits 463 and 464.  
 33 (2) The geographic service area served by zip codes with the first  
 34 three (3) digits 465 and 466.  
 35 (3) The geographic service area served by zip codes with the first  
 36 three (3) digits 467 and 468.  
 37 (4) The geographic service area served by zip codes with the first  
 38 three (3) digits 469 and 479.  
 39 (5) The geographic service area served by zip codes with the first  
 40 three (3) digits 460, 461 (except 46107), and 473.  
 41 (6) The geographic service area served by the 46107 zip code and  
 42 zip codes with the first three (3) digits 462.

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- 1 (7) The geographic service area served by zip codes with the first
- 2 three (3) digits 470, 471, 472, 474, and 478.
- 3 (8) The geographic service area served by zip codes with the first
- 4 three (3) digits 475, 476, and 477.
- 5 (i) "Medical service provider" refers to a person or an entity that
- 6 provides medical services, treatment, or supplies to an employee under
- 7 IC 22-3-2 through IC 22-3-6.
- 8 (j) "Pecuniary liability" means the responsibility of an employer or
- 9 the employer's insurance carrier for the payment of the charges for each
- 10 specific service or product for human medical treatment provided
- 11 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
- 12 less than the charges made by medical service providers at the eightieth
- 13 percentile in the same community for like services or products.
- 14 SECTION 4. IC 22-3-7-19, AS AMENDED BY P.L.31-2000,
- 15 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 16 JULY 1, 2003]: Sec. 19. (a) In computing compensation for temporary
- 17 total disability, temporary partial disability, and total permanent
- 18 disability under this law with respect to occupational diseases
- 19 occurring:
- 20 (1) on and after July 1, 1974, and before July 1, 1976, the average
- 21 weekly wages shall be considered to be:
- 22 (A) not more than one hundred thirty-five dollars (\$135); and
- 23 (B) not less than seventy-five dollars (\$75);
- 24 (2) on and after July 1, 1976, and before July 1, 1977, the average
- 25 weekly wages shall be considered to be:
- 26 (A) not more than one hundred fifty-six dollars (\$156); and
- 27 (B) not less than seventy-five dollars (\$75);
- 28 (3) on and after July 1, 1977, and before July 1, 1979, the average
- 29 weekly wages are considered to be:
- 30 (A) not more than one hundred eighty dollars (\$180); and
- 31 (B) not less than seventy-five dollars (\$75);
- 32 (4) on and after July 1, 1979, and before July 1, 1980, the average
- 33 weekly wages are considered to be:
- 34 (A) not more than one hundred ninety-five dollars (\$195); and
- 35 (B) not less than seventy-five dollars (\$75);
- 36 (5) on and after July 1, 1980, and before July 1, 1983, the average
- 37 weekly wages are considered to be:
- 38 (A) not more than two hundred ten dollars (\$210); and
- 39 (B) not less than seventy-five dollars (\$75);
- 40 (6) on and after July 1, 1983, and before July 1, 1984, the average
- 41 weekly wages are considered to be:
- 42 (A) not more than two hundred thirty-four dollars (\$234); and

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- 1 (B) not less than seventy-five dollars (\$75); and  
2 (7) on and after July 1, 1984, and before July 1, 1985, the average  
3 weekly wages are considered to be:  
4 (A) not more than two hundred forty-nine dollars (\$249); and  
5 (B) not less than seventy-five dollars (\$75).  
6 (b) In computing compensation for temporary total disability,  
7 temporary partial disability, and total permanent disability, with respect  
8 to occupational diseases occurring on and after July 1, 1985, and before  
9 July 1, 1986, the average weekly wages are considered to be:  
10 (1) not more than two hundred sixty-seven dollars (\$267); and  
11 (2) not less than seventy-five dollars (\$75).  
12 (c) In computing compensation for temporary total disability,  
13 temporary partial disability, and total permanent disability, with respect  
14 to occupational diseases occurring on and after July 1, 1986, and before  
15 July 1, 1988, the average weekly wages are considered to be:  
16 (1) not more than two hundred eighty-five dollars (\$285); and  
17 (2) not less than seventy-five dollars (\$75).  
18 (d) In computing compensation for temporary total disability,  
19 temporary partial disability, and total permanent disability, with respect  
20 to occupational diseases occurring on and after July 1, 1988, and before  
21 July 1, 1989, the average weekly wages are considered to be:  
22 (1) not more than three hundred eighty-four dollars (\$384); and  
23 (2) not less than seventy-five dollars (\$75).  
24 (e) In computing compensation for temporary total disability,  
25 temporary partial disability, and total permanent disability, with respect  
26 to occupational diseases occurring on and after July 1, 1989, and before  
27 July 1, 1990, the average weekly wages are considered to be:  
28 (1) not more than four hundred eleven dollars (\$411); and  
29 (2) not less than seventy-five dollars (\$75).  
30 (f) In computing compensation for temporary total disability,  
31 temporary partial disability, and total permanent disability, with respect  
32 to occupational diseases occurring on and after July 1, 1990, and before  
33 July 1, 1991, the average weekly wages are considered to be:  
34 (1) not more than four hundred forty-one dollars (\$441); and  
35 (2) not less than seventy-five dollars (\$75).  
36 (g) In computing compensation for temporary total disability,  
37 temporary partial disability, and total permanent disability, with respect  
38 to occupational diseases occurring on and after July 1, 1991, and before  
39 July 1, 1992, the average weekly wages are considered to be:  
40 (1) not more than four hundred ninety-two dollars (\$492); and  
41 (2) not less than seventy-five dollars (\$75).  
42 (h) In computing compensation for temporary total disability,

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1 temporary partial disability, and total permanent disability, with respect  
 2 to occupational diseases occurring on and after July 1, 1992, and before  
 3 July 1, 1993, the average weekly wages are considered to be:

4 (1) not more than five hundred forty dollars (\$540); and

5 (2) not less than seventy-five dollars (\$75).

6 (i) In computing compensation for temporary total disability,  
 7 temporary partial disability, and total permanent disability, with respect  
 8 to occupational diseases occurring on and after July 1, 1993, and before  
 9 July 1, 1994, the average weekly wages are considered to be:

10 (1) not more than five hundred ninety-one dollars (\$591); and

11 (2) not less than seventy-five dollars (\$75).

12 (j) In computing compensation for temporary total disability,  
 13 temporary partial disability, and total permanent disability, with respect  
 14 to occupational diseases occurring on and after July 1, 1994, and before  
 15 July 1, 1997, the average weekly wages are considered to be:

16 (1) not more than six hundred forty-two dollars (\$642); and

17 (2) not less than seventy-five dollars (\$75).

18 (k) In computing compensation for temporary total disability,  
 19 temporary partial disability, and total permanent disability, the average  
 20 weekly wages are considered to be:

21 (1) with respect to occupational diseases occurring on and after  
 22 July 1, 1997, and before July 1, 1998:

23 (A) not more than six hundred seventy-two dollars (\$672); and

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

25 (2) with respect to occupational diseases occurring on and after  
 26 July 1, 1998, and before July 1, 1999:

27 (A) not more than seven hundred two dollars (\$702); and

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

29 (3) with respect to occupational diseases occurring on and after  
 30 July 1, 1999, and before July 1, 2000:

31 (A) not more than seven hundred thirty-two dollars (\$732);

32 and

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

34 (4) with respect to occupational diseases occurring on and after  
 35 July 1, 2000, and before July 1, 2001:

36 (A) not more than seven hundred sixty-two dollars (\$762); and

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

38 (5) with respect to disablements occurring on and after July 1,  
 39 2001, and before July 1, 2002:

40 (A) not more than eight hundred twenty-two dollars (\$822);

41 and

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

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1 (6) with respect to disablements occurring on and after July 1,  
 2 2002:  
 3 (A) not more than eight hundred eighty-two dollars (\$882);  
 4 and  
 5 (B) not less than seventy-five dollars (\$75).  
 6 (l) The maximum compensation that shall be paid for occupational  
 7 disease and its results under any one (1) or more provisions of this  
 8 chapter with respect to disability or death occurring:  
 9 (1) on and after July 1, 1974, and before July 1, 1976, shall not  
 10 exceed forty-five thousand dollars (\$45,000) in any case;  
 11 (2) on and after July 1, 1976, and before July 1, 1977, shall not  
 12 exceed fifty-two thousand dollars (\$52,000) in any case;  
 13 (3) on and after July 1, 1977, and before July 1, 1979, may not  
 14 exceed sixty thousand dollars (\$60,000) in any case;  
 15 (4) on and after July 1, 1979, and before July 1, 1980, may not  
 16 exceed sixty-five thousand dollars (\$65,000) in any case;  
 17 (5) on and after July 1, 1980, and before July 1, 1983, may not  
 18 exceed seventy thousand dollars (\$70,000) in any case;  
 19 (6) on and after July 1, 1983, and before July 1, 1984, may not  
 20 exceed seventy-eight thousand dollars (\$78,000) in any case; and  
 21 (7) on and after July 1, 1984, and before July 1, 1985, may not  
 22 exceed eighty-three thousand dollars (\$83,000) in any case.  
 23 (m) The maximum compensation with respect to disability or death  
 24 occurring on and after July 1, 1985, and before July 1, 1986, which  
 25 shall be paid for occupational disease and the results thereof under the  
 26 provisions of this chapter or under any combination of its provisions  
 27 may not exceed eighty-nine thousand dollars (\$89,000) in any case.  
 28 The maximum compensation with respect to disability or death  
 29 occurring on and after July 1, 1986, and before July 1, 1988, which  
 30 shall be paid for occupational disease and the results thereof under the  
 31 provisions of this chapter or under any combination of its provisions  
 32 may not exceed ninety-five thousand dollars (\$95,000) in any case. The  
 33 maximum compensation with respect to disability or death occurring  
 34 on and after July 1, 1988, and before July 1, 1989, that shall be paid for  
 35 occupational disease and the results thereof under this chapter or under  
 36 any combination of its provisions may not exceed one hundred  
 37 twenty-eight thousand dollars (\$128,000) in any case.  
 38 (n) The maximum compensation with respect to disability or death  
 39 occurring on and after July 1, 1989, and before July 1, 1990, that shall  
 40 be paid for occupational disease and the results thereof under this  
 41 chapter or under any combination of its provisions may not exceed one  
 42 hundred thirty-seven thousand dollars (\$137,000) in any case.

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

6 (p) The maximum compensation with respect to disability or death  
 7 occurring on and after July 1, 1991, and before July 1, 1992, that shall  
 8 be paid for occupational disease and the results thereof under this  
 9 chapter or under any combination of the provisions of this chapter may  
 10 not exceed one hundred sixty-four thousand dollars (\$164,000) in any  
 11 case.

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

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

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

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

33 (1) With respect to disability or death occurring on and after July  
 34 1, 1997, and before July 1, 1998, two hundred twenty-four  
 35 thousand dollars (\$224,000).

36 (2) With respect to disability or death occurring on and after July  
 37 1, 1998, and before July 1, 1999, two hundred thirty-four  
 38 thousand dollars (\$234,000).

39 (3) With respect to disability or death occurring on and after July  
 40 1, 1999, and before July 1, 2000, two hundred forty-four thousand  
 41 dollars (\$244,000).

42 (4) With respect to disability or death occurring on and after July

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1           1, 2000, and before July 1, 2001, two hundred fifty-four thousand  
2           dollars (\$254,000).  
3           (5) With respect to disability or death occurring on and after July  
4           1, 2001, and before July 1, 2002, two hundred seventy-four  
5           thousand dollars (\$274,000).  
6           (6) With respect to disability or death occurring on and after July  
7           1, 2002, two hundred ninety-four thousand dollars (\$294,000).  
8           (u) For all disabilities occurring before July 1, 1985, "average  
9           weekly wages" shall mean the earnings of the injured employee in the  
10          employment in which the employee was working at the time of the last  
11          exposure during the period of fifty-two (52) weeks immediately  
12          preceding the last day of the last exposure divided by fifty-two (52). If  
13          the employee lost seven (7) or more calendar days during the period,  
14          although not in the same week, then the earnings for the remainder of  
15          the fifty-two (52) weeks shall be divided by the number of weeks and  
16          parts thereof remaining after the time lost has been deducted. Where  
17          the employment prior to the last day of the last exposure extended over  
18          a period of less than fifty-two (52) weeks, the method of dividing the  
19          earnings during that period by the number of weeks and parts thereof  
20          during which the employee earned wages shall be followed if results  
21          just and fair to both parties will be obtained. Where by reason of the  
22          shortness of the time during which the employee has been in the  
23          employment of the employer or of the casual nature or terms of the  
24          employment it is impracticable to compute the average weekly wages  
25          as above defined, regard shall be had to the average weekly amount  
26          which, during the fifty-two (52) weeks previous to the last day of the  
27          last exposure, was being earned by a person in the same grade  
28          employed at the same work by the same employer, or if there is no  
29          person so employed, by a person in the same grade employed in that  
30          same class of employment in the same district. Whenever allowances  
31          of any character are made to an employee in lieu of wages or a  
32          specified part of the wage contract, they shall be deemed a part of the  
33          employee's earnings.  
34          (v) For all disabilities occurring on and after July 1, 1985, "average  
35          weekly wages" means the earnings of the injured employee during the  
36          period of fifty-two (52) weeks immediately preceding the disability  
37          divided by fifty-two (52). If the employee lost seven (7) or more  
38          calendar days during the period, although not in the same week, then  
39          the earnings for the remainder of the fifty-two (52) weeks shall be  
40          divided by the number of weeks and parts of weeks remaining after the  
41          time lost has been deducted. If employment before the date of disability  
42          extended over a period of less than fifty-two (52) weeks, the method of

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1 dividing the earnings during that period by the number of weeks and  
 2 parts of weeks during which the employee earned wages shall be  
 3 followed if results just and fair to both parties will be obtained. If by  
 4 reason of the shortness of the time during which the employee has been  
 5 in the employment of the employer or of the casual nature or terms of  
 6 the employment it is impracticable to compute the average weekly  
 7 wages for the employee, the employee's average weekly wages shall be  
 8 considered to be the average weekly amount that, during the fifty-two  
 9 (52) weeks before the date of disability, was being earned by a person  
 10 in the same grade employed at the same work by the same employer or,  
 11 if there is no person so employed, by a person in the same grade  
 12 employed in that same class of employment in the same district.  
 13 Whenever allowances of any character are made to an employee  
 14 instead of wages or a specified part of the wage contract, they shall be  
 15 considered a part of the employee's earnings.

16 **(w) In computing the average weekly wage for an employee who**  
 17 **has sustained a compensable occupational disease, who has**  
 18 **returned to work, and who has a later period of disability due to**  
 19 **that occupational disease after July 1, 2003, the average weekly**  
 20 **wage for that period of disability shall be determined based on the**  
 21 **average weekly wage at the time of that disability subject to the**  
 22 **maximum average weekly wage in effect as of the last day worked,**  
 23 **computed as set forth in this section.**

24 **(x)** The provisions of this article may not be construed to result in  
 25 an award of benefits in which the number of weeks paid or to be paid  
 26 for temporary total disability, temporary partial disability, or permanent  
 27 total disability benefits combined exceeds five hundred (500) weeks.  
 28 This section shall not be construed to prevent a person from applying  
 29 for an award under IC 22-3-3-13. However, in case of permanent total  
 30 disability resulting from a disablement occurring on or after January 1,  
 31 1998, the minimum total benefit shall not be less than seventy-five  
 32 thousand dollars (\$75,000).

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