

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:

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

1 may at any time correct any clerical error in any finding or award.

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

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

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

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

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

18 **(3) The employee:**

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

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

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

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

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

1 conditions since the making of such agreement, either party may then
2 make an application to the board for the determination of the matters
3 in dispute. When compensation which is payable in accordance with an
4 award or by agreement approved by the board is ordered paid in a lump
5 sum by the board, no review shall be had as in this subsection
6 mentioned.

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

9 (1) The approximate date of the last day of the last exposure and
10 the approximate date of the disablement.

11 (2) The general nature and character of the illness or disease
12 claimed.

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

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

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

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

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

40 (e) If an application for review is made to the board within thirty
41 (30) days from the date of the award made by less than all the
42 members, the full board, if the first hearing was not held before the full

1 board, shall review the evidence, or, if deemed advisable, hear the
2 parties at issue, their representatives, and witnesses as soon as
3 practicable, and shall make an award and file the same with the finding
4 of the facts on which it is based and send a copy thereof to each of the
5 parties in dispute, in like manner as specified in subsection (d).

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

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

42 (h) In all proceedings before the worker's compensation board or in

1 a court under the compensation provisions of this chapter, the costs
2 shall be awarded and taxed as provided by law in ordinary civil actions
3 in the circuit court.

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

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

33 (k) The board or any member thereof may, upon the application of
34 either party or upon its own motion, appoint a disinterested and duly
35 qualified industrial hygienist, industrial engineer, industrial physician,
36 or chemist to make any necessary investigation of the occupation in
37 which the employee alleges that he was last exposed to the hazards of
38 the occupational disease claimed upon, and testify with respect to the
39 occupational disease health hazards found by such person or persons
40 to exist in such occupation. Such person or persons shall be allowed
41 traveling expenses and a reasonable fee, to be fixed by the board. The
42 fees and expenses of such persons shall be paid by the state, only on

1 special order of the board or a member thereof.

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

21 **(m) This subsection applies to the modification of a claim arising**
 22 **from a compensable occupational disease that occurs after June 30,**
 23 **2003. The board has authority, upon application of an employee**
 24 **whose temporary total disability weekly benefit has been**
 25 **previously determined under this article, to recompute the**
 26 **employee's temporary total disability weekly benefit if all the**
 27 **following conditions are met:**

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

31 **(A) the date of the initial compensable occupational**
 32 **disease; or**

33 **(B) the last date for which temporary total disability**
 34 **benefits were paid for the initial compensable occupational**
 35 **disease.**

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

39 **(3) The employee:**

40 **(A) is employed as an apprentice under a contractual**
 41 **provision that provides for a United States Department of**
 42 **Labor approved apprenticeship with scheduled skill and**

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

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

and when so amended that said bill do pass .

Committee Vote: Yeas 9, Nays 0.

Senator Harrison, Chairperson