

---

---

# SENATE BILL No. 297

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-3-7-9; IC 34-20-3-2.

**Synopsis:** Actions based on exposure to hazardous substances. Provides a statute of limitations for causes of action for occupational disease if the cause of action is based on an exposure to a hazardous substance. Provides for a product liability action against persons who mined or sold commercial asbestos products. (Current law provides for a product liability action against persons who mined and sold commercial asbestos.) Provides for a one year period, ending July 1, 2011, to file an otherwise time-barred cause of action for: (1) occupational disease based on an exposure to a hazardous substance; (2) personal injury, disability, disease, or death resulting from exposure to asbestos; or (3) property damage resulting from asbestos.

**Effective:** July 1, 2010.

---

---

### Becker, Steele

---

---

January 11, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

---

---

C  
o  
p  
y



Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

C  
o  
p  
y

**SENATE BILL No. 297**



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

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

1 SECTION 1. IC 22-3-7-9, AS AMENDED BY P.L.180-2009,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2010]: Sec. 9. (a) As used in this chapter, "employer" includes  
4 the state and any political subdivision, any municipal corporation  
5 within the state, any individual or the legal representative of a deceased  
6 individual, firm, association, limited liability company, or corporation  
7 or the receiver or trustee of the same, using the services of another for  
8 pay. A parent corporation and its subsidiaries shall each be considered  
9 joint employers of the corporation's, the parent's, or the subsidiaries'  
10 employees for purposes of sections 6 and 33 of this chapter. Both a  
11 lessor and a lessee of employees shall each be considered joint  
12 employers of the employees provided by the lessor to the lessee for  
13 purposes of sections 6 and 33 of this chapter. The term also includes an  
14 employer that provides on-the-job training under the federal School to  
15 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth  
16 under section 2.5 of this chapter. If the employer is insured, the term  
17 includes the employer's insurer so far as applicable. However, the



1 inclusion of an employer's insurer within this definition does not allow  
2 an employer's insurer to avoid payment for services rendered to an  
3 employee with the approval of the employer. The term does not include  
4 a nonprofit corporation that is recognized as tax exempt under Section  
5 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a))  
6 to the extent the corporation enters into an independent contractor  
7 agreement with a person for the performance of youth coaching  
8 services on a part-time basis.

9 (b) As used in this chapter, "employee" means every person,  
10 including a minor, in the service of another, under any contract of hire  
11 or apprenticeship written or implied, except one whose employment is  
12 both casual and not in the usual course of the trade, business,  
13 occupation, or profession of the employer. For purposes of this chapter,  
14 the following apply:

15 (1) Any reference to an employee who has suffered disablement,  
16 when the employee is dead, also includes the employee's legal  
17 representative, dependents, and other persons to whom  
18 compensation may be payable.

19 (2) An owner of a sole proprietorship may elect to include the  
20 owner as an employee under this chapter if the owner is actually  
21 engaged in the proprietorship business. If the owner makes this  
22 election, the owner must serve upon the owner's insurance carrier  
23 and upon the board written notice of the election. No owner of a  
24 sole proprietorship may be considered an employee under this  
25 chapter unless the notice has been received. If the owner of a sole  
26 proprietorship is an independent contractor in the construction  
27 trades and does not make the election provided under this  
28 subdivision, the owner must obtain an affidavit of exemption  
29 under section 34.5 of this chapter.

30 (3) A partner in a partnership may elect to include the partner as  
31 an employee under this chapter if the partner is actually engaged  
32 in the partnership business. If a partner makes this election, the  
33 partner must serve upon the partner's insurance carrier and upon  
34 the board written notice of the election. No partner may be  
35 considered an employee under this chapter until the notice has  
36 been received. If a partner in a partnership is an independent  
37 contractor in the construction trades and does not make the  
38 election provided under this subdivision, the partner must obtain  
39 an affidavit of exemption under section 34.5 of this chapter.

40 (4) Real estate professionals are not employees under this chapter  
41 if:

42 (A) they are licensed real estate agents;

C  
O  
P  
Y



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

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

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

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(9) An officer of a corporation who is the sole officer of the corporation is an employee of the corporation under this chapter. An officer of a corporation who is the sole officer of the corporation may elect not to be an employee of the corporation under this chapter. If an officer makes this election, the officer must serve written notice of the election on the corporation's insurance carrier and the board. An officer of a corporation who is the sole officer of the corporation may not be considered to be excluded as an employee under this chapter until the notice is received by the insurance carrier and the board.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. **For purposes of this chapter, the following apply:**

C  
o  
p  
y



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

(1) A minor employee shall be considered as being of full age. ~~for all purposes of this chapter. However,~~

(2) If the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, ~~the provisions of this subsection prescribing double the amount otherwise recoverable do~~ **subdivision does** not apply.

(3) The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, the minor's parents, the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to:

- (1) casual laborers as defined in subsection (b); ~~nor to~~
- (2) farm or agricultural employees; ~~nor to~~
- (3) household employees; ~~nor to~~
- (4) railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto; ~~nor to their~~
- (5) employers ~~with respect to these of the employees Also, this chapter does not apply to~~ **described in subdivision (4); or**
- (6) employees or their employers ~~with respect to~~ **for** employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom the employee claims compensation or equal wages in other suitable employment, and

C  
O  
P  
Y



1 "disability" means the state of being so incapacitated.

2 (f) For the purposes of this chapter, no compensation shall be  
3 payable for or on account of any occupational diseases unless  
4 disablement, as defined in subsection (e), occurs within two (2) years  
5 after the last day of the last exposure to the hazards of the disease  
6 except for the following:

7 (1) In all cases of occupational diseases caused by the inhalation  
8 of silica dust or coal dust, no compensation shall be payable  
9 unless disablement, as defined in subsection (e), occurs within  
10 three (3) years after the last day of the last exposure to the hazards  
11 of the disease.

12 (2) In all cases of occupational disease caused by the exposure to  
13 radiation, a **hazardous substance**, no compensation shall be  
14 payable unless disablement, as defined in subsection (e), occurs  
15 within two (2) years from the date on which the employee had  
16 knowledge of the nature of the employee's occupational disease  
17 or, by exercise of reasonable diligence, should have known of the  
18 existence of such disease and its causal relationship to the  
19 employee's employment.

20 (3) In all cases of occupational diseases caused by the inhalation  
21 of asbestos dust, no compensation shall be payable unless  
22 disablement, as defined in subsection (e), occurs within three (3)  
23 years after the last day of the last exposure to the hazards of the  
24 disease if the last day of the last exposure was before July 1, 1985.

25 (4) In all cases of occupational disease caused by the inhalation  
26 of asbestos dust in which the last date of the last exposure occurs  
27 on or after July 1, 1985, and before July 1, 1988, no compensation  
28 shall be payable unless disablement, as defined in subsection (e),  
29 occurs within twenty (20) years after the last day of the last  
30 exposure.

31 (5) In all cases of occupational disease caused by the inhalation  
32 of asbestos dust in which the last date of the last exposure occurs  
33 on or after July 1, 1988, no compensation shall be payable unless  
34 disablement (as defined in subsection (e)) occurs within  
35 thirty-five (35) years after the last day of the last exposure.

36 (g) For the purposes of this chapter, no compensation shall be  
37 payable for or on account of death resulting from any occupational  
38 disease unless death occurs within two (2) years after the date of  
39 disablement. However, this subsection does not bar compensation for  
40 death:

41 (1) where death occurs during the pendency of a claim filed by an  
42 employee within two (2) years after the date of disablement and

C  
o  
p  
y



1 which claim has not resulted in a decision or has resulted in a  
 2 decision which is in process of review or appeal; or  
 3 (2) where, by agreement filed or decision rendered, a  
 4 compensable period of disability has been fixed and death occurs  
 5 within two (2) years after the end of such fixed period; but in no  
 6 event later than three hundred (300) weeks after the date of  
 7 disablement.

8 **in all cases of occupational disease caused by the exposure to a**  
 9 **hazardous substance in which:**

- 10 (1) **disablement occurred before July 1, 2010; and**
- 11 (2) **an action based on the disablement was barred on July 1,**
- 12 **2010, by a period of limitations or repose in effect before July**
- 13 **1, 2010;**

14 **the action may be commenced after June 30, 2010, and before July**  
 15 **1, 2011, notwithstanding any other law to the contrary.**

16 (h) As used in this chapter, "billing review service" refers to a  
 17 person or an entity that reviews a medical service provider's bills or  
 18 statements for the purpose of determining pecuniary liability. The term  
 19 includes an employer's worker's compensation insurance carrier if the  
 20 insurance carrier performs such a review.

21 (i) As used in this chapter, "billing review standard" means the data  
 22 used by a billing review service to determine pecuniary liability.

23 (j) As used in this chapter, "community" means a geographic service  
 24 area based on ZIP code districts defined by the United States Postal  
 25 Service according to the following groupings:

- 26 (1) The geographic service area served by ZIP codes with the first
- 27 three (3) digits 463 and 464.
- 28 (2) The geographic service area served by ZIP codes with the first
- 29 three (3) digits 465 and 466.
- 30 (3) The geographic service area served by ZIP codes with the first
- 31 three (3) digits 467 and 468.
- 32 (4) The geographic service area served by ZIP codes with the first
- 33 three (3) digits 469 and 479.
- 34 (5) The geographic service area served by ZIP codes with the first
- 35 three (3) digits 460, 461 (except 46107), and 473.
- 36 (6) The geographic service area served by the 46107 ZIP code and
- 37 ZIP codes with the first three (3) digits 462.
- 38 (7) The geographic service area served by ZIP codes with the first
- 39 three (3) digits 470, 471, 472, 474, and 478.
- 40 (8) The geographic service area served by ZIP codes with the first
- 41 three (3) digits 475, 476, and 477.

42 (k) As used in this chapter, "medical service provider" refers to a

C  
O  
P  
Y



1 person or an entity that provides medical services, treatment, or  
2 supplies to an employee under this chapter.

3 (l) As used in this chapter, "pecuniary liability" means the  
4 responsibility of an employer or the employer's insurance carrier for the  
5 payment of the charges for each specific service or product for human  
6 medical treatment provided under this chapter in a defined community,  
7 equal to or less than the charges made by medical service providers at  
8 the eightieth percentile in the same community for like services or  
9 products.

10 **(m) As used in this chapter, "hazardous substance" means a**  
11 **material or waste that has been determined to be hazardous or**  
12 **potentially hazardous to an individual, to property, or to the**  
13 **environment by the United States Environmental Protection**  
14 **Agency, the federal Nuclear Regulatory Commission, the United**  
15 **States Department of Transportation, the solid waste management**  
16 **board, or the United States Occupational Safety and Health**  
17 **Agency or any agent or designee of any of the above mentioned**  
18 **boards, agencies, or commission.**

19 SECTION 2. IC 34-20-3-2 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) A product  
21 liability action that is based on:

- 22 (1) property damage resulting from asbestos; or  
23 (2) personal injury, disability, disease, or death resulting from  
24 exposure to asbestos;

25 must be commenced within two (2) years after the cause of action  
26 accrues. The subsequent development of an additional asbestos related  
27 disease or injury is a new injury and is a separate cause of action.

28 (b) A product liability action for personal injury, disability, disease,  
29 or death resulting from exposure to asbestos accrues on the date when  
30 the injured person knows that the person has an asbestos related  
31 disease or injury.

32 (c) A product liability action for property damage accrues on the  
33 date when the injured person knows that the property damage has  
34 resulted from asbestos.

35 (d) This section applies only to product liability actions against:

- 36 (1) persons who mined ~~and~~ **or** sold commercial asbestos  
37 **products;** and  
38 (2) funds that have, as a result of bankruptcy proceedings or to  
39 avoid bankruptcy proceedings, been created for the payment of  
40 asbestos related disease claims or asbestos related property  
41 damage claims.

42 ~~(e) For the purposes of IC 1-1-1-8, if any part of this section is held~~

C  
O  
P  
Y





1 ~~invalid, the entire section is void.~~  
 2 (f) (e) Except for the cause of action expressly recognized in this  
 3 section, this section does not otherwise modify the limitation of action  
 4 or repose period contained in section 1 of this chapter.  
 5 (f) This section applies to all actions that accrue before, on, or  
 6 after July 1, 2010, for:  
 7 (1) personal injury, disability, disease, or death resulting from  
 8 exposure to asbestos; or  
 9 (2) property damage resulting from asbestos.  
 10 (g) An action under this section that was barred on July 1, 2010,  
 11 by the period of limitations in section 1(b)(2) of this chapter may  
 12 be commenced after June 30, 2010, and before July 1, 2011.

C  
o  
p  
y

