

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1376 be amended to read as follows:

1 Page 29, delete lines 7 through 11, begin a new line block indented
2 and insert:

3 **"(4) an eligible person (as defined in IC 34-13-8-1) with**
4 **respect to a distribution paid from the supplemental state fair**
5 **relief fund for an occurrence (as defined in IC 34-13-8-2);"**.

6 Page 29, delete line 42, begin a new line double block indented and
7 insert:

8 **"(D) IC 34-13-8 concerning a distribution paid from the**
9 **supplemental state fair relief fund to an eligible person (as**
10 **defined in IC 34-13-8-1) for an occurrence (as defined in**
11 **IC 34-13-8-2);"**.

12 Page 30, delete lines 1 through 4.

13 Page 30, delete lines 35 through 42, begin a new line double block
14 indented and insert:

15 **"(D) IC 34-13-8 concerning a distribution paid from the**
16 **supplemental state fair relief fund to an eligible person (as**
17 **defined in IC 34-13-8-1) for an occurrence (as defined in**
18 **IC 34-13-8-2).**

19 SECTION 47. IC 34-13-8 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 UPON PASSAGE]:

22 **Chapter 8. Special Supplemental Relief**

23 **Sec. 1. As used in this chapter, "eligible person" refers to a**
24 **person or the estate of a person that properly filed a claim with the**
25 **state, in the form prescribed by the attorney general, before**
26 **December 31, 2011, for physical injury or death resulting from an**
27 **occurrence.**

28 **Sec. 2. As used in this chapter, "occurrence" refers to one (1) or**
29 **more acts or omissions by the state or employees of the state in**
30 **connection with a single event occurring after July 31, 2011, and**

1 before September 1, 2011, that resulted in the death of seven (7) or
2 more persons.

3 Sec. 3. As used in this chapter, "supplemental fund" refers to
4 the supplemental state fair relief fund established by section 9 of
5 this chapter.

6 Sec. 4. (a) Recognizing the special conditions created by an
7 occurrence, it is the intent of the general assembly to provide
8 supplemental relief for victims of the occurrence. It is not the
9 intent of the general assembly to revise the tort claims act in order
10 to address the special situation of the occurrence.

11 (b) The attorney general may compromise or settle a claim or
12 suit brought against the state or its employees as provided in this
13 chapter.

14 (c) Only eligible persons are eligible to receive compensation
15 under this chapter.

16 Sec. 5. (a) The attorney general shall attempt to resolve before
17 January 1, 2013, all claims and suits brought against the state or its
18 employees for an occurrence for an amount that, in the aggregate,
19 does not exceed eleven million dollars (\$11,000,000), consisting of:

20 (1) five million dollars (\$5,000,000) paid from the state tort
21 claim fund established to pay claims and expenses under
22 IC 34-13-3-24; and

23 (2) six million dollars (\$6,000,000) to be paid from the
24 supplemental fund.

25 (b) The attorney general shall attempt to resolve before January
26 1, 2013, claims or suits for an occurrence as follows:

27 (1) The estate of an eligible person whose death resulted from
28 an occurrence shall receive seven hundred thousand dollars
29 (\$700,000), including any compensation under this chapter for
30 the eligible person's attorney's fees.

31 (2) Except as provided in subdivision (3), each other eligible
32 person who was physically injured as a result of an
33 occurrence shall be compensated (including any compensation
34 under this chapter for the eligible person's attorney's fees) for
35 the physical injury in an amount that does not exceed the least
36 of the following:

37 (A) The amount of the eligible person's losses.

38 (B) The amount claimed by the eligible person in relation
39 to the claim filed before December 31, 2011.

40 (C) Seven hundred thousand dollars (\$700,000).

41 (3) Eligible persons who suffered physical injuries involving
42 permanent paralysis or permanent physical trauma or
43 requiring major and ongoing long-term care shall be
44 compensated for the physical injury in an amount equal to:

45 (A) the amount of compensation paid under subdivision

46 (2); plus

47 (B) additional compensation determined under the process

1 established by the attorney general under subdivision (4).
2 (4) The attorney general shall establish a process for
3 determining the equitable amount of compensation for eligible
4 persons under subdivision (3). The attorney general shall
5 before January 1, 2013, determine the amount of
6 compensation that each eligible person described in
7 subdivision (3) is entitled to receive under subdivision (3). The
8 attorney general may employ arbitrators, mediators,
9 consultants, and other experts to assist in the process
10 established by the attorney general for determining the
11 compensation for eligible persons under subdivision (3).

12 Sec. 6. (a) To receive a distribution under this chapter for an
13 occurrence, an eligible person must have already released all
14 governmental entities and public employees from any liability for
15 loss resulting from the occurrence. The release must be in a form
16 that is satisfactory to the attorney general.

17 (b) A distribution may not be paid under this chapter from the
18 supplemental fund to an eligible person unless the eligible person
19 has entered into an agreement with the state providing that the
20 person will not bring any action against the state based on an
21 indemnification clause.

22 Sec. 7. The amount payable after December 31, 2011, as
23 provided in section 5(b) of this chapter to an eligible person shall
24 be reduced by any amount that was paid under IC 34-13-3 from
25 the state tort claim fund before January 1, 2012, for the death or
26 physical injury.

27 Sec. 8. If an eligible person is represented by an attorney
28 regarding compensation from the supplemental fund, the
29 attorney's fees paid to the attorney or attorneys for the
30 representation of the eligible person regarding compensation from
31 the supplemental fund may not exceed, in aggregate, ten percent
32 (10%) of the total compensation paid to the eligible person from
33 the supplemental fund.

34 Sec. 9. (a) The supplemental state fair relief fund is established
35 for the purpose of providing supplemental relief to the victims of
36 the occurrence.

37 (b) The supplemental fund consists of grants, donations, and
38 appropriations made by the general assembly. The supplemental
39 fund shall be administered by the attorney general. The treasurer
40 of state shall invest the money in the supplemental fund not
41 currently needed to meet the obligations of the supplemental fund
42 in the same manner as other public money may be invested.
43 Interest that accrues from these investments shall be deposited in
44 the state general fund. The expenses of administering the
45 supplemental fund shall be paid from the state tort claim fund
46 established to pay claims and expenses under IC 34-13-3-24.

47 (c) The supplemental fund is considered a trust fund for

1 purposes of IC 4-9.1-1-7. Money may not be transferred, assigned,
 2 or otherwise removed from the supplemental fund by the state
 3 board of finance, the budget agency, or any other state agency
 4 except as provided in this chapter.

5 (d) Money in the supplemental fund at the end of a state fiscal
 6 year does not revert to the state general fund. Money in the
 7 supplemental fund is continually appropriated to the attorney
 8 general to carry out the purposes of the supplemental fund.

9 Sec. 10. (a) The attorney general may use the money in the
 10 supplemental fund to pay compensation to eligible persons as
 11 provided in this chapter.

12 (b) After the estate of each eligible person whose death resulted
 13 from an occurrence has received seven hundred thousand dollars
 14 (\$700,000), and each other eligible person who was physically
 15 injured as a result of an occurrence has been compensated in the
 16 amount determined under section 5(b)(2) of this chapter, the
 17 remaining balance in the supplemental fund shall be used to pay
 18 compensation for ongoing personal care expenses to eligible
 19 persons described in section 5(b)(3) of this chapter according to the
 20 process established by the attorney general under section 5(b)(4)
 21 of this chapter. Compensation paid from the supplemental fund
 22 may not be used for the following:

23 (1) Expenses covered by insurance.

24 (2) Expenses covered by another party.

25 Sec. 11. The expenses incurred by the attorney general in
 26 carrying out this chapter (including any expenses for arbitrators,
 27 mediators, consultants, or any other experts) shall be paid from the
 28 state tort claim fund established to pay claims and expenses under
 29 IC 34-13-3-24.

30 Sec. 12. (a) An eligible person may assign to the attorney general
 31 the eligible person's right to pursue a cause of action for the
 32 tortious breach of an insurer's duty to deal with an insured person
 33 in good faith.

34 (b) If the insurance commissioner believes that a person has
 35 engaged in any of the acts or practices listed in IC 27-4-1-4.5 in
 36 relation to an occurrence, the insurance commissioner may issue
 37 and cause to be served upon the person a statement of the charges
 38 and a notice in writing of a hearing as provided in IC 27-4-1-5. If
 39 after a hearing under IC 4-21.5-3, the insurance commissioner
 40 determines that the person has engaged in any of the acts or
 41 practices listed in IC 27-4-1-4.5 in relation to an occurrence, the
 42 insurance commissioner may at the insurance commissioner's
 43 discretion order one (1) or more of the remedies provided in
 44 IC 27-4-1-6. Notwithstanding IC 27-4-1, the insurance
 45 commissioner may take an action under this subsection regarding
 46 the commission by a person of a single act or practice listed in
 47 IC 27-4-1-4.5 in relation to an occurrence, without having to

- 1 **demonstrate that the act or practice occurs with such frequency as**
 2 **to indicate a general practice by the person."**
- 3 Delete page 31 through 32.
- 4 Page 33, delete lines 1 through 35.
- 5 Page 33, line 39, delete "an award made" and insert "**a distribution**
 6 **paid**".
- 7 Page 33, line 40, delete "award" and insert "**relief**".
- 8 Page 33, line 40, delete "(as established by".
- 9 Page 33, line 41, delete "IC 34-13-3-14.1(c)".
- 10 Page 33, line 41, delete "IC 34-13-3-14(c)" and insert "**IC 34-13-8**".
- 11 Page 33, line 42, delete "IC 34-13-3-14(b(1))" and insert "**IC**
 12 **34-13-8-1**".
- 13 Page 34, line 1, delete "IC 34-13-3-14(b(2))." and insert "**IC**
 14 **34-13-8-2**".
- 15 Page 34, line 7, delete "IC 34-13-3-14(b(1))" and insert "**IC**
 16 **34-13-8-1**".
- 17 Page 34, line 8, delete "IC 34-13-3-14(b(2))" and insert "**IC**
 18 **34-13-8-2**".
- 19 Page 34, line 11, delete "award" and insert "**relief**".
- 20 Page 34, line 11, delete "(as established by IC 34-13-3-14.1(c)".
- 21 Page 34, line 14, delete "IC 34-13-3-14(b(1))" and insert "**IC**
 22 **34-13-8-1**".
- 23 Page 34, line 15, delete "IC 34-13-3-14(b(2))" and insert "**IC**
 24 **34-13-8-2**".
- 25 Page 34, line 15, delete "IC 34-13-3-14(c)." and insert "**IC**
 26 **34-13-8**".
- 27 Page 34, line 17, "IC 34-13-3-14(c)," and insert "**IC 34-13-8 is**
 28 **paid**".
- 29 Page 34, line 20, delete "an award made" and insert "**a distribution**
 30 **paid**".
- 31 Page 34, line 21, delete "award" and insert "**relief**".
- 32 Page 34, line 21, delete "(as established by".
- 33 Page 34, line 22, delete "IC 34-13-3-14.1(c)".
- 34 Page 34, line 23, delete "IC 34-13-3-14(b(1))" and insert "**IC**
 35 **34-13-8-1**".
- 36 Page 34, line 24, delete "IC 34-13-3-14(b(2))" and insert "**IC**
 37 **34-13-8-2**".
- 38 Page 34, line 24, delete "IC 34-13-3-14(c)" and insert "**IC 34-13-8**".
- 39 Page 36, delete lines 38 through 42, begin a new line block
 40 indented, and insert:
- 41 **"(13) Compensation distributed from the supplemental state**
 42 **fair relief fund under IC 34-13-8 to an eligible person (as**
 43 **defined in IC 34-13-8-1) for an occurrence (as defined in**
 44 **IC 34-13-8-2). This subdivision applies even if a debtor is not**
 45 **domiciled in Indiana."**
- 46 Page 37, delete line 1.

- 1 Page 38, line 10, delete "award" and insert "**relief**".
- 2 Page 38, line 10, delete "(as".
- 3 Page 38, line 11, delete "established by IC 34-13-3-14.1(c))" and
- 4 insert "**(IC 34-13-8-9)**".
- 5 Page 38, line 17, delete "award" and insert "**relief**".
- 6 Renumber all SECTIONS consecutively.
(Reference is to EHB 1376 as printed February 24, 2012.)

Senator KENLEY