

SENATE BILL No. 310

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3-7-9; IC 32-30-1; IC 34-6-2-52; IC 34-20-3-2.

Synopsis: Actions based on exposure to hazardous substances. Provides statutes of limitations for causes of action for: (1) occupational disease; (2) deficiencies in the design, planning, supervision, construction, or observation of construction of an improvement to real property; and (3) product liability; when the cause of action is based on an exposure to a hazardous substance. Provides for a one year period, ending July 1, 2014, to file an otherwise time-barred cause of action based on an exposure to a hazardous substance.

Effective: July 1, 2013.

Broden

January 8, 2013, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 310



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.6-2012,
 2 SECTION 150, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) As used in this chapter,
 4 "employer" includes the state and any political subdivision, any
 5 municipal corporation within the state, any individual or the legal
 6 representative of a deceased individual, firm, association, limited
 7 liability company, or corporation or the receiver or trustee of the same,
 8 using the services of another for pay. A parent corporation and its
 9 subsidiaries shall each be considered joint employers of the
 10 corporation's, the parent's, or the subsidiaries' employees for purposes
 11 of sections 6 and 33 of this chapter. Both a lessor and a lessee of
 12 employees shall each be considered joint employers of the employees
 13 provided by the lessor to the lessee for purposes of sections 6 and 33
 14 of this chapter. The term also includes an employer that provides
 15 on-the-job training under the federal School to Work Opportunities Act
 16 (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this
 17 chapter. If the employer is insured, the term includes the employer's



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

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

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

20 (2) An owner of a sole proprietorship may elect to include the
 21 owner as an employee under this chapter if the owner is actually
 22 engaged in the proprietorship business. If the owner makes this
 23 election, the owner must serve upon the owner's insurance carrier
 24 and upon the board written notice of the election. No owner of a
 25 sole proprietorship may be considered an employee under this
 26 chapter unless the notice has been received. If the owner of a sole
 27 proprietorship:

28 (A) is an independent contractor in the construction trades and
 29 does not make the election provided under this subdivision,
 30 the owner must obtain a certificate of exemption under section
 31 34.5 of this chapter; or

32 (B) is an independent contractor and does not make the
 33 election provided under this subdivision, the owner may obtain
 34 a certificate of exemption under section 34.5 of this chapter.

35 (3) A partner in a partnership may elect to include the partner as
 36 an employee under this chapter if the partner is actually engaged
 37 in the partnership business. If a partner makes this election, the
 38 partner must serve upon the partner's insurance carrier and upon
 39 the board written notice of the election. No partner may be
 40 considered an employee under this chapter until the notice has
 41 been received. If a partner in a partnership:

42 (A) is an independent contractor in the construction trades and

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- 1 does not make the election provided under this subdivision,
 2 the partner must obtain a certificate of exemption under
 3 section 34.5 of this chapter; or
 4 (B) is an independent contractor and does not make the
 5 election provided under this subdivision, the partner may
 6 obtain a certificate of exemption under section 34.5 of this
 7 chapter.
- 8 (4) Real estate professionals are not employees under this chapter
 9 if:
 10 (A) they are licensed real estate agents;
 11 (B) substantially all their remuneration is directly related to
 12 sales volume and not the number of hours worked; and
 13 (C) they have written agreements with real estate brokers
 14 stating that they are not to be treated as employees for tax
 15 purposes.
- 16 (5) A person is an independent contractor in the construction
 17 trades and not an employee under this chapter if the person is an
 18 independent contractor under the guidelines of the United States
 19 Internal Revenue Service.
- 20 (6) An owner-operator that provides a motor vehicle and the
 21 services of a driver under a written contract that is subject to
 22 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor
 23 carrier is not an employee of the motor carrier for purposes of this
 24 chapter. The owner-operator may elect to be covered and have the
 25 owner-operator's drivers covered under a worker's compensation
 26 insurance policy or authorized self-insurance that insures the
 27 motor carrier if the owner-operator pays the premiums as
 28 requested by the motor carrier. An election by an owner-operator
 29 under this subdivision does not terminate the independent
 30 contractor status of the owner-operator for any purpose other than
 31 the purpose of this subdivision.
- 32 (7) An unpaid participant under the federal School to Work
 33 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
 34 extent set forth under section 2.5 of this chapter.
- 35 (8) A person who enters into an independent contractor agreement
 36 with a nonprofit corporation that is recognized as tax exempt
 37 under Section 501(c)(3) of the Internal Revenue Code (as defined
 38 in IC 6-3-1-11(a)) to perform youth coaching services on a
 39 part-time basis is not an employee for purposes of this chapter.
- 40 (9) An officer of a corporation who is the sole officer of the
 41 corporation is an employee of the corporation under this chapter.
 42 An officer of a corporation who is the sole officer of the

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

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

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

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

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

34 (d) This chapter does not apply to:

35 (1) casual laborers as defined in subsection (b); ~~nor to~~

36 (2) farm or agricultural employees; ~~nor to~~

37 (3) household employees; ~~nor to~~

38 (4) railroad employees engaged in train service as engineers,
 39 firemen, conductors, brakemen, flagmen, baggagemen, or
 40 foremen in charge of yard engines and helpers assigned thereto;
 41 ~~nor to their~~

42 (5) ~~the employers with respect to these of the employees Also;~~

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1 this chapter does not apply to described in subdivision (4); or
 2 (6) employees or their employers with respect to employments in
 3 which the laws of the United States provide for compensation or
 4 liability for injury to the health, disability, or death by reason of
 5 diseases suffered by these employees.

6 (e) As used in this chapter, "disablement" means the event of
 7 becoming disabled from earning full wages at the work in which the
 8 employee was engaged when last exposed to the hazards of the
 9 occupational disease by the employer from whom the employee claims
 10 compensation or equal wages in other suitable employment, and
 11 "disability" means the state of being so incapacitated.

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

17 (1) In all cases of occupational diseases caused by the inhalation
 18 of silica dust or coal dust, no compensation shall be payable
 19 unless disablement, as defined in subsection (e); occurs within
 20 three (3) years after the last day of the last exposure to the hazards
 21 of the disease:

22 (2) in all cases of occupational disease caused by the exposure to
 23 radiation; a hazardous substance (as defined in IC 34-6-2-52),
 24 no compensation shall be payable unless disablement, as defined
 25 in subsection (e), occurs within two (2) years from the date on
 26 which the employee had knowledge of the nature of the
 27 employee's occupational disease or, by exercise of reasonable
 28 diligence, should have known of the existence of such disease and
 29 its causal relationship to the employee's employment.

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

35 (4) In all cases of occupational disease caused by the inhalation
 36 of asbestos dust in which the last date of the last exposure occurs
 37 on or after July 1, 1985, and before July 1, 1988, no compensation
 38 shall be payable unless disablement, as defined in subsection (e);
 39 occurs within twenty (20) years after the last day of the last
 40 exposure:

41 (5) In all cases of occupational disease caused by the inhalation
 42 of asbestos dust in which the last date of the last exposure occurs

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1 on or after July 1, 1988, no compensation shall be payable unless
 2 disablement (as defined in subsection (e)) occurs within
 3 thirty-five (35) years after the last day of the last exposure.

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

9 (1) where death occurs during the pendency of a claim filed by an
 10 employee within two (2) years after the date of disablement and
 11 which claim has not resulted in a decision or has resulted in a
 12 decision which is in process of review or appeal; or

13 (2) where, by agreement filed or decision rendered, a
 14 compensable period of disability has been fixed and death occurs
 15 within two (2) years after the end of such fixed period; but in no
 16 event later than three hundred (300) weeks after the date of
 17 disablement.

18 **in all cases of occupational disease caused by exposure to a**
 19 **hazardous substance (as defined in IC 34-6-2-52) in which:**

20 (1) **disablement occurred before July 1, 2013; and**

21 (2) **an action based on the disablement was barred on July 1,**
 22 **2013, by a period of limitations or repose in effect before July**
 23 **1, 2013;**

24 **the action may be commenced after June 30, 2013, and before July**
 25 **1, 2014, notwithstanding any other law to the contrary.**

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

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

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

36 (1) The geographic service area served by ZIP codes with the first
 37 three (3) digits 463 and 464.

38 (2) The geographic service area served by ZIP codes with the first
 39 three (3) digits 465 and 466.

40 (3) The geographic service area served by ZIP codes with the first
 41 three (3) digits 467 and 468.

42 (4) The geographic service area served by ZIP codes with the first

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- 1 three (3) digits 469 and 479.
- 2 (5) The geographic service area served by ZIP codes with the first
- 3 three (3) digits 460, 461 (except 46107), and 473.
- 4 (6) The geographic service area served by the 46107 ZIP code and
- 5 ZIP codes with the first three (3) digits 462.
- 6 (7) The geographic service area served by ZIP codes with the first
- 7 three (3) digits 470, 471, 472, 474, and 478.
- 8 (8) The geographic service area served by ZIP codes with the first
- 9 three (3) digits 475, 476, and 477.
- 10 (k) As used in this chapter, "medical service provider" refers to a
- 11 person or an entity that provides medical services, treatment, or
- 12 supplies to an employee under this chapter.
- 13 (l) As used in this chapter, "pecuniary liability" means the
- 14 responsibility of an employer or the employer's insurance carrier for the
- 15 payment of the charges for each specific service or product for human
- 16 medical treatment provided under this chapter in a defined community,
- 17 equal to or less than the charges made by medical service providers at
- 18 the eightieth percentile in the same community for like services or
- 19 products.
- 20 SECTION 2. IC 32-30-1-5, AS AMENDED BY P.L.79-2005,
- 21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2013]: Sec. 5. (a) As used in this section, "designer" means a
- 23 person who:
- 24 (1) designs, plans, supervises, or observes the construction of an
- 25 improvement to real property; or
- 26 (2) constructs an improvement to real property.
- 27 (b) As used in this section, "possessor" means a person having
- 28 ownership, possession, or control of real property at the time an alleged
- 29 deficiency in an improvement to the real property causes injury or
- 30 wrongful death.
- 31 (c) As used in this section, "deficiency" does not mean a failure by
- 32 a possessor to use reasonable care to maintain an improvement to real
- 33 property following a substantial completion of an improvement.
- 34 (d) An action to recover damages, whether based upon contract, tort,
- 35 nuisance, or another legal remedy, for:
- 36 (1) a deficiency or an alleged deficiency in the design, planning,
- 37 supervision, construction, or observation of construction of an
- 38 improvement to real property;
- 39 (2) an injury to real or personal property arising out of a
- 40 deficiency; or
- 41 (3) an injury or wrongful death of a person arising out of a
- 42 deficiency;

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1 may not be brought against a designer or possessor unless the action is
 2 commenced within the earlier of ten (10) years after the date of
 3 substantial completion of the improvement or twelve (12) years after
 4 the completion and submission of plans and specifications to the owner
 5 if the action is for a deficiency in the design of the improvement.

6 **(e) An action for a deficiency or alleged deficiency in the design,**
 7 **planning, supervision, construction, or observation of construction**
 8 **of an improvement to real property that is based on personal**
 9 **injury, disease, disability, or death from an exposure to a**
 10 **hazardous substance (as defined in IC 34-6-2-52) that occurs not**
 11 **later than:**

12 (1) ten (10) years after the date of substantial completion of
 13 the improvement; or

14 (2) twelve (12) years after the completion and submission of
 15 plans and specifications to the owner;

16 **must be commenced not later than two (2) years after the cause of**
 17 **action accrues. The subsequent development of additional personal**
 18 **injury, disease, disability, or death is a new and separate cause of**
 19 **action under this subsection.**

20 **(f) A cause of action under subsection (e) accrues on the date**
 21 **when the injured person knows:**

22 (1) that the person has a personal injury, disease, or disability
 23 caused by exposure to a hazardous substance (as defined in
 24 IC 34-6-2-52); and

25 (2) that the exposure occurred as a result of a deficiency in the
 26 design, planning, supervision, construction, or observation of
 27 construction of an improvement to real property.

28 **(g) The limitations period described in subsection (e) applies to**
 29 **all actions for personal injury, disease, disability, or death caused**
 30 **by exposure to a hazardous substance (as defined in IC 34-6-2-52)**
 31 **that occurred as a result of a deficiency in the design, planning,**
 32 **supervision, construction, or observation of construction of an**
 33 **improvement to real property, whether those actions accrue**
 34 **before, on, or after July 1, 2013.**

35 **(h) An action for personal injury, disease, disability, or death**
 36 **caused by exposure to a hazardous substance (as defined in**
 37 **IC 34-6-2-52) that occurred as a result of a deficiency in the design,**
 38 **planning, supervision, construction, or observation of construction**
 39 **of an improvement to real property that was barred on July 1,**
 40 **2013, by a period of limitations or repose in effect before July 1,**
 41 **2013, may be commenced after June 30, 2013, and before July 1,**
 42 **2014, notwithstanding any other law to the contrary.**

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1 SECTION 3. IC 32-30-1-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. **(a) This section**
3 **applies to actions commenced under section 5(d) of this chapter.**

4 ~~(a) Notwithstanding section 5 of this chapter,~~ **(b)** If an injury to or
5 wrongful death of a person occurs during the ninth or tenth year after
6 substantial completion of an improvement to real property, an action in
7 tort to recover damages for the injury or wrongful death may be
8 brought within two (2) years after the date on which the injury
9 occurred, irrespective of the date of death.

10 ~~(b)~~ **(c)** However, an action may not be brought more than:

11 (1) twelve (12) years after the substantial completion of
12 construction of the improvement; or

13 (2) fourteen (14) years after the completion and submission of
14 plans and specifications to the owner, if the action is for a
15 deficiency in design;

16 whichever comes first.

17 SECTION 4. IC 34-6-2-52 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 52. "Hazardous
19 substance", for purposes of **IC 34-20-3-2 and IC 34-30-6**, means:

20 (1) a material or waste that has been determined to be hazardous
21 or potentially hazardous to any individual, to property, or to the
22 environment by the United States Environmental Protection
23 Agency, the federal Nuclear Regulatory Commission, the United
24 States Department of Transportation, the solid waste management
25 board, or the United States Occupational Safety and Health
26 Agency or any agent or designee of any of the above mentioned
27 boards, agencies, or commission; or

28 (2) any substance that may be potentially hazardous to any person,
29 to property, or to the environment.

30 SECTION 5. IC 34-20-3-2 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) A product
32 liability action that is based on

33 ~~(1) property damage resulting from asbestos; or~~

34 ~~(2) personal injury, disability, disease, or death resulting from~~
35 ~~exposure to asbestos;~~

36 **a hazardous substance** must be commenced within two (2) years after
37 the cause of action accrues. The subsequent development of an
38 additional ~~asbestos related~~ disease or injury is a new injury and is a
39 separate cause of action.

40 (b) A product liability action for personal injury, disability, disease,
41 or death resulting from exposure to ~~asbestos~~ **a hazardous substance**
42 accrues on the date when the injured person knows that the person has

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1 an asbestos related a disease or injury **caused by exposure to a**
2 **hazardous substance.**

3 (e) A product liability action for property damage accrues on the
4 date when the injured person knows that the property damage has
5 resulted from asbestos:

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

7 (1) persons who mined and sold commercial asbestos; and

8 (2) funds that have, as a result of bankruptcy proceedings or to
9 avoid bankruptcy proceedings, been created for the payment of
10 asbestos related disease claims or asbestos related property
11 damage claims.

12 (e) For the purposes of IC 1-1-1-8, if any part of this section is held
13 invalid, the entire section is void.

14 (f) (c) Except for the cause of action expressly recognized in this
15 section, this section does not otherwise modify the limitation of action
16 or repose period contained in section 1 of this chapter.

17 (d) **This section applies to all product liability actions that are**
18 **based on personal injury, disability, disease, or death resulting**
19 **from exposure to a hazardous substance that accrue before, on, or**
20 **after July 1, 2013.**

21 (e) **A product liability action that is based on personal injury,**
22 **disease, disability, or death resulting from exposure to a hazardous**
23 **substance that was barred on July 1, 2013, by a period of**
24 **limitations or repose that was in effect before July 1, 2013, may be**
25 **commenced after June 30, 2013, and before July 1, 2014,**
26 **notwithstanding any other law to the contrary.**

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