January 21, 2022

SENATE BILL No. 296

DIGEST OF SB 296 (Updated January 19, 2022 9:43 am - DI 140)

Citations Affected: IC 5-10; IC 22-3; noncode.

Synopsis: Disability plans. Requires the long term and short term disability plans for state employees to provide on a biweekly basis, after a seven day elimination period, 100% of qualified wages for a correctional officer employed by the department of correction who is disabled by injuries resulting from certain tortious acts. Requires the state personnel department to amend a section of the Indiana Administrative Code. Defines a term. Makes conforming amendments and technical corrections.

Effective: July 1, 2022.

Boots, Niezgodski

January 10, 2022, read first time and referred to Committee on Pensions and Labor.
January 20, 2022, reported favorably — Do Pass.

January 21, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE BILL No. 296

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

SECTION 1. IC 5-10-8-7, AS AMENDED BY P.L.198-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 7. (a) The state, excluding state educational institutions, may not purchase or maintain a policy of group insurance, except:

(1) life insurance for the state's employees;

(2) long term care insurance under a long term care insurance policy (as defined in IC 27-8-12-5), for the state's employees; or

(3) an insurance policy that provides coverage that supplements coverage provided under a United States military health care plan.

(b) With the consent of the governor, the state personnel department may establish self-insurance programs to provide group insurance other than life or long term care insurance for state employees and retired state employees. The state personnel department may contract with a private agency, business firm, limited liability company, or corporation for administrative services. A commission may not be paid for the placement of the contract. The department may require, as part of a contract for administrative services, that the provider of the administrative services offer to an employee terminating state employment the option to purchase, without evidence of insurability, an individual policy of insurance.

(c) Notwithstanding subsection (a), with the consent of the governor, the state personnel department may contract for health services for state employees through one (1) or more prepaid health care delivery plans.

(d) The state personnel department shall adopt rules under IC 4-22-2 to establish long term and short term disability plans for state employees (except employees who hold elected offices (as defined by IC 3-5-2-17)). The plans adopted under this subsection may include any provisions the department considers necessary and proper and must:

(1) require participation in the plan by employees with six (6) months of continuous, full-time service;

(2) require an employee to make a contribution to the plan in the form of a payroll deduction;

(3) require that an employee's benefits under the short term disability plan be subject to a thirty (30) day elimination period and that benefits under the long term plan be subject to a six (6) month elimination period;

(4) prohibit the termination of an employee who is eligible for benefits under the plan;

(5) **except as provided in section 25 of this chapter,** provide, after a seven (7) day elimination period, eighty percent (80%) of base biweekly wages for an employee disabled by injuries resulting from tortious acts, as distinguished from passive negligence, that occur within the employee's scope of state employment;

(6) provide that an employee's benefits under the plan may be reduced, dollar for dollar, if the employee derives income from:

(A) Social Security;

(B) the public employees' retirement fund;

(C) the Indiana state teachers' retirement fund;

(D) pension disability;

(E) worker's compensation;

(F) benefits provided from another employer's group plan; or

(G) remuneration for employment entered into after the disability was incurred.

(The department of state revenue and the department of workforce development shall cooperate with the state personnel department

to confirm that an employee has disclosed complete and accurate information necessary to administer this subdivision.);
(7) provide that an employee will not receive benefits under the plan for a disability resulting from causes specified in the rules; and
(8) provide that, if an employee refuses to:
(A) accept work assignments appropriate to the employee's medical condition;
(B) submit information necessary for claim administration; or
(C) submit to examinations by designated physicians;
the employee forfeits benefits under the plan.

(e) This section does not affect insurance for retirees under IC 5-10.3 or IC 5-10.4.

(f) The state may pay part of the cost of self-insurance or prepaid health care delivery plans for its employees.

(g) A state agency may not provide any insurance benefits to its employees that are not generally available to other state employees, unless specifically authorized by law.

(h) The state may pay a part of the cost of group medical and life coverage for its employees.

(i) To carry out the purposes of this section, a trust fund may be established. The trust fund established under this subsection is considered a trust fund for purposes of IC 4-9.1-1-7. Money may not be transferred, assigned, or otherwise removed from the trust fund established under this subsection by the state board of finance, the budget agency, or any other state agency. Money in a trust fund established under this subsection does not revert to the state general fund at the end of any state fiscal year. The trust fund established under this subsection consists of appropriations, revenues, or transfers to the trust fund under IC 4-12-1. Contributions to the trust fund are irrevocable. The trust fund must be limited to providing prefunding of annual required contributions and to cover OPEB liability for covered individuals. Funds may be used only for these purposes and not to increase benefits or reduce premiums. The trust fund shall be established to comply with and be administered in a manner that satisfies the Internal Revenue Code requirements concerning a trust fund for prefunding annual required contributions and for covering OPEB liability for covered individuals. All assets in the trust fund established under this subsection:
(1) are dedicated exclusively to providing benefits to covered individuals and their beneficiaries according to the terms of the health plan; and

(2) are exempt from levy, sale, garnishment, attachment, or other legal process.

The trust fund established under this subsection shall be administered by the state personnel department. The expenses of administering the trust fund shall be paid from money in the trust fund. Notwithstanding IC 5-13, the treasurer of state shall invest the money in the trust fund not currently needed to meet the obligations of the trust fund in the same manner as money may be invested by the public employees' retirement fund under IC 5-10.3-5. However, the trustee may not invest the money in the trust in equity securities. The trustee shall also comply with the prudent investor rule set forth in IC 30-4-3.5. The trustee may contract with investment management professionals, investment advisors, and legal counsel to assist in the investment of the trust and may pay the state expenses incurred under those contracts from the trust. Interest that accrues from these investments shall be deposited in the trust fund.

(j) Nothing in this section prohibits the state personnel department from directly contracting with health care providers for health care services for state employees.

SECTION 2. IC 5-10-8-25 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 25. (a) This section applies to a correctional officer employed by the department of correction who is injured after June 30, 2022.**

(b) For purposes of this section, "qualified wages" means:

(1) the number of hours that a correctional officer is typically scheduled to work during a pay period, as determined by the department of correction; multiplied by

(2) the injured employee's rate of pay as of the date of the injury.

(c) The plans adopted under section 7(d) of this chapter must provide on a biweekly basis, after a seven (7) day elimination period, one hundred percent (100%) of qualified wages for an employee who is disabled by injuries resulting from tortious acts, as distinguished from passive negligence, that occur within the employee's scope of state employment.

SECTION 3. IC 22-3-3-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 23. (a) Any payments made by the employer to the injured employee during the period of ~~his~~ **the employee's** disability, or to ~~his~~ **the employee's** dependents, which by the terms of IC 22-3-2 through IC 22-3-6 were not due and payable when made, may, subject to the approval of the worker's compensation board, be deducted from the amount to be paid as compensation. However, the deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(b) Payments to state employees under the terms of IC 5-10-8-7(d)(5) **or IC 5-10-8-25** shall be taken as a credit by the state against payments of compensation for temporary total disability during the time period in which the employee is eligible for compensation under both:

(1) IC 5-10-8-7(d)(5) **or IC 5-10-8-25;** and

(2) section 8 of this chapter.

After a state employee is ineligible for payments under IC 5-10-8-7(d)(5) **or IC 5-10-8-25** and if ~~he~~ **the employee** is still eligible for payments for temporary total disability under section 8 of this chapter, any payments for temporary total disability shall be deducted from the amount of compensation payable under section 10 of this chapter. Payments to state employees under the terms of IC 5-10-8-7(d)(5) **or IC 5-10-8-25** may not be deducted from compensation payable under section 10 of this chapter.

SECTION 4. [EFFECTIVE JULY 1, 2022] **(a) The state personnel department shall amend 31 IAC 5-9-26 to conform to IC 5-10-8-7, as amended by this act, and IC 5-10-8-25, as added by this act.**

(b) In amending the rules as required by this SECTION, the state personnel department may adopt emergency rules in the manner provided by IC 4-22-2-37.1.

(c) Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the state personnel department under this SECTION expires on the date on which a rule that supersedes the emergency rule is adopted by the state personnel department under IC 4-22-2-24 through IC 4-22-2-36.

(d) This SECTION expires July 1, 2024.

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 296, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 296 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 9, Nays 0