

SENATE BILL No. 214

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-22; IC 34-46-2-25.4.

Synopsis: Internal insurance compliance audits. Provides that certain information related to voluntary, internal insurance compliance audits is privileged information.

Effective: July 1, 2005.

Young R Michael

January 4, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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SENATE BILL No. 214



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

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

1 SECTION 1. IC 27-2-22 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]:
4 **Chapter 22. Privilege Applying to Internal Insurance**
5 **Compliance Audits**
6 **Sec. 1. As used in this chapter, "department" refers to the**
7 **department of insurance created by IC 27-1-1-1.**
8 **Sec. 2. As used in this chapter, "insurance compliance audit"**
9 **means a voluntary internal evaluation, review, assessment, audit,**
10 **or investigation for the purpose of:**
11 **(1) identifying noncompliance;**
12 **(2) preventing noncompliance; or**
13 **(3) promoting compliance;**
14 **with laws, regulations, orders, or industry or professional**
15 **standards, conducted by or on behalf of an insurer or activity**
16 **licensed or regulated under this title.**
17 **Sec. 3. (a) As used in this chapter, "insurance compliance audit**



1 document" means a document and related materials prepared in
2 connection with an insurance compliance audit.

3 (b) The term in subsection (a) does not include original
4 underlying corporate records and documents described in section
5 17 of this chapter.

6 (c) An insurance compliance audit document includes any of the
7 following:

8 (1) An insurance compliance audit report that:
9 (A) is prepared by an employee of the insurer or an
10 independent contractor; and

11 (B) may include the scope of the audit, the information
12 gained in the audit, and conclusions and recommendations,
13 with exhibits and appendices.

14 (2) Memoranda and documents analyzing parts or all of an
15 insurance compliance audit report and discussing potential
16 implementation issues.

17 (3) An implementation plan that addresses:
18 (A) corrections of previous noncompliance;
19 (B) improvement of current compliance; and
20 (C) prevention of future noncompliance.

21 (4) Supporting documents, notes, records, analytic data, or
22 other evidentiary materials generated in the course of
23 conducting the insurance compliance audit.

24 Sec. 4. As used in this chapter, "insurer" has the meaning set
25 forth in IC 27-1-2-3.

26 Sec. 5. As used in this chapter, "reasonable corrective action"
27 may, where applicable, include:

- 28 (1) reimbursement of premium payments, surcharges, or
29 other charges made;
- 30 (2) compensation for losses sustained;
- 31 (3) reinstatement of policies canceled; or
- 32 (4) another appropriate remedy;

33 with respect to persons adversely affected by an insurer's
34 noncompliance with a law, a regulation, an order, or an industry
35 or professional standard revealed by an insurance compliance
36 audit.

37 Sec. 6. Except as provided in this chapter, an insurance
38 compliance audit document is privileged information and is not
39 discoverable or admissible as evidence in a civil or an
40 administrative proceeding.

41 Sec. 7. (a) Except as provided in this chapter, an individual
42 involved in preparation of an insurance compliance audit or

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1 insurance compliance audit document is not subject to examination
2 concerning the insurance compliance audit or insurance
3 compliance audit document in a civil or an administrative
4 proceeding. However, if the insurance compliance audit, insurance
5 compliance audit document, or a part of the insurance compliance
6 audit or insurance compliance audit document is not privileged, the
7 individual may be examined concerning the part of the insurance
8 compliance audit or insurance compliance audit document that is
9 not privileged.

10 (b) An individual involved in the preparation of an insurance
11 compliance audit or insurance compliance audit document who
12 becomes aware of an alleged criminal violation in the course of the
13 preparation shall report the act to the insurer.

14 (c) Not later than thirty (30) days after receiving a report under
15 subsection (b), the insurer shall provide the information to the
16 commissioner.

17 (d) An individual who knowingly fails to make a report under
18 subsection (b) commits a Class A misdemeanor.

19 **Sec. 8. (a) The commissioner:**

20 (1) shall not provide to a person an insurance compliance
21 audit document provided to the commissioner:

- 22 (A) voluntarily; or
- 23 (B) at the request of the commissioner under a claim of
24 authority to compel disclosure under section 13 of this
25 chapter; and

26 (2) shall treat an insurance compliance audit document as
27 confidential information for purposes of IC 27-1-3-10.5
28 without waiving the privileges established under sections 6
29 and 7 of this chapter.

30 (b) An insurance compliance audit document provided as
31 described in subsection (a)(1) may not be used for any purpose
32 other than to determine:

- 33 (1) whether:
 - 34 (A) disclosed defects in an insurer's policies and
35 procedures; or
 - 36 (B) inappropriate treatment of customers;
37 has been remedied; or
- 38 (2) whether an appropriate plan for remedy of a defect or
39 inappropriate treatment specified in subdivision (1) is in
40 place.

41 **Sec. 9. (a) An insurance compliance audit document that is**
42 **provided to the commissioner is subject to applicable statutory or**

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common law privilege, including:

- (1) the work product doctrine;**
- (2) attorney-client privilege; or**
- (3) the subsequent remedial measures exclusion.**

(b) An insurance compliance audit document provided to the commissioner is the property of the insurer and is confidential.

Sec. 10. An insurer that discloses an internal compliance audit document to a governmental entity:

- (1) voluntarily; or**
- (2) as required by law;**

does not waive a privilege established under section 6 or 7 of this chapter with respect to any other person or governmental entity.

Sec. 11. A privilege established under section 6 or 7 of this chapter does not apply to the extent that the privilege is expressly waived by the insurer that prepared or caused to be prepared an insurance compliance audit document.

Sec. 12. A privilege established under section 6 or 7 of this chapter does not apply if a court, after an in camera review, requires disclosure in a civil or an administrative proceeding after determining at least one (1) of the following:

- (1) The privilege is asserted for a fraudulent purpose.**
- (2) The material is not subject to the privilege as provided under section 17 of this chapter.**
- (3) The insurer has failed to undertake reasonable corrective action or eliminate noncompliance with applicable laws within a reasonable period.**

Sec. 13. (a) Not later than thirty (30) days after the commissioner, the attorney general, or a pleading party in a civil action makes a written request by certified mail for disclosure of an insurance compliance audit document, the insurer that prepared the insurance compliance audit document or caused the insurance compliance audit document to be prepared may file a petition in a court with jurisdiction in the same venue chosen by the original pleading party requesting an in camera hearing to determine whether the insurance compliance audit document or parts of the insurance compliance audit document are subject to disclosure.

(b) Failure by an insurer to file a petition under subsection (a) waives the privilege provided under this chapter for the insurance compliance audit document that is the subject of a request for disclosure under subsection (a).

(c) An insurer asserting a privilege established under section 6

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1 or 7 of this chapter in response to a request for disclosure of an
2 insurance compliance audit document under subsection (a) must
3 include in the insurer's petition for an in camera hearing, with
4 respect to the insurance compliance audit document, all the
5 information listed in section 14 of this chapter.

6 (d) Not later than thirty (30) days after an insurer files a
7 petition under subsection (a), the court shall issue an order
8 scheduling an in camera hearing to determine whether the
9 insurance compliance audit document or parts of the audit
10 document are privileged or are subject to disclosure.

11 Sec. 14. An insurer asserting a privilege established under
12 section 6 or 7 of this chapter in response to a request for disclosure
13 under section 13 of this chapter shall provide to the commissioner,
14 the attorney general, or a pleading party in a civil matter, at the
15 time the insurer files an objection to the disclosure, the following
16 information:

- 17 (1) The date of the insurance compliance audit document.
- 18 (2) The identity of the person who conducted the insurance
19 compliance audit.
- 20 (3) The general nature of the activities covered by the
21 insurance compliance audit.
- 22 (4) An identification of the parts of the insurance compliance
23 audit document for which the privilege is asserted.

24 Sec. 15. (a) An insurer that asserts a privilege established under
25 section 6 or 7 of this chapter has the burden of demonstrating the
26 applicability of the privilege.

27 (b) After an insurer has established the applicability of a
28 privilege under subsection (a), the pleading party in a civil action,
29 including the commissioner or attorney general, that seeks
30 disclosure for a cause described in section 12 of this chapter has the
31 burden of proving that the:

- 32 (1) privilege is asserted for a fraudulent purpose;
- 33 (2) material is not subject to the privilege as provided under
34 section 17 of this chapter; or
- 35 (3) insurer failed to undertake reasonable corrective action or
36 failed to eliminate noncompliance within a reasonable period.

37 (c) If the court finds that the privilege is asserted for a
38 fraudulent purpose, the court shall award reasonable attorney's
39 fees to be paid by the insurer to the pleading party.

40 Sec. 16. (a) The parties described in section 13 of this chapter
41 may at any time stipulate in legal proceedings before a court under
42 this chapter to entry of an order directing whether specific

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1 information contained in an insurance compliance audit document
2 is subject to a privilege established under section 6 or 7 of this
3 chapter.

4 (b) A stipulation described in subsection (a) may be limited to
5 the instant proceeding and, absent specific language to the
6 contrary, is not applicable in any other proceeding.

7 Sec. 17. A privilege established under section 6 or 7 of this
8 chapter does not extend to the following original underlying
9 corporate records and documents:

10 (1) Documents, communications, data, reports, or other
11 information expressly required to be collected, developed,
12 maintained, or reported to a regulatory entity under this title,
13 another state law, or federal law.

14 (2) Information obtained through observation or monitoring
15 by a regulatory entity.

16 (3) Information obtained from a source independent of an
17 insurance compliance audit.

18 (4) Documents, communications, data, reports, memoranda,
19 drawings, photographs, exhibits, computer records, maps,
20 charts, graphs, surveys, and other materials prepared or
21 maintained in the ordinary course of insurance business and
22 not in relation to an insurance compliance audit.

23 Sec. 18. (a) If a privilege established under section 6 or 7 of this
24 chapter does not apply as described in sections 11 and 12 of this
25 chapter, a court may compel the disclosure of only the parts of an
26 insurance compliance audit document relevant to issues in dispute
27 in the underlying proceeding.

28 (b) Information required to be disclosed under subsection (a) is
29 confidential and not public information, and a privilege established
30 under section 6 or 7 of this chapter that otherwise applies to the
31 information is not waived for purposes of another civil or
32 administrative proceeding.

33 Sec. 19. (a) This chapter does not limit, waive, or abrogate the
34 scope or nature of a statutory or common law privilege other than
35 a privilege established under this chapter.

36 (b) Except as provided in section 13 of this chapter, this chapter
37 does not limit the department's authority to compel the disclosure
38 of documents necessary to further the department's general
39 regulatory purpose.

40 SECTION 2. IC 34-46-2-25.4 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2005]: Sec. 25.4. IC 27-2-22 (Concerning

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1 certain information related to internal insurance compliance
2 audits).

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