



Reprinted
February 24, 2007

HOUSE BILL No. 1452

DIGEST OF HB 1452 (Updated February 23, 2007 2:41 pm - DI 77)

Citations Affected: IC 27-8.

Synopsis: Insurance producers and policy forms. Specifies policy form filing requirements for a policy of accident and sickness insurance. Removes the definition of "compensation" from the law concerning compensation to insurance producers or representatives for the sale of long term care policies.

Effective: July 1, 2007.

Klinker, Koch, Fry, Ripley

January 23, 2007, read first time and referred to Committee on Insurance.
February 19, 2007, amended, reported — Do Pass.
February 23, 2007, read second time, amended, ordered engrossed.

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HB 1452—LS 7444/DI 97+



First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1452

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 27-8-5-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The term "policy of accident
3 and sickness insurance", as used in this chapter, includes any policy or
4 contract covering one (1) or more of the kinds of insurance described
5 in Class 1(b) or 2(a) of IC 27-1-5-1. Such policies may be on the
6 individual basis under this section and sections 2 through 9 of this
7 chapter, on the group basis under this section and sections 16 through
8 19 of this chapter, on the franchise basis under this section and section
9 11 of this chapter, or on a blanket basis under section 15 of this chapter
10 and (except as otherwise expressly provided in this chapter) shall be
11 exclusively governed by this chapter.

12 (b) No policy of accident and sickness insurance may be issued or
13 delivered to any person in this state, nor may any application, rider, or
14 endorsement be used in connection with an accident and sickness
15 insurance policy, until a copy of the form of the policy and of the
16 classification of risks and the premium rates, or, in the case of
17 assessment companies, the estimated cost pertaining thereto, have been

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1 filed with **and reviewed by** the commissioner **under section 1.5 of**
2 **this chapter.** This section is applicable also to assessment companies
3 and fraternal benefit associations or societies.

4 (c) No policy of accident and sickness insurance may be issued, nor
5 may any application, rider, or endorsement be used in connection with
6 a policy of accident and sickness insurance; until the expiration of
7 thirty (30) days after it has been filed under subsection (b); unless the
8 commissioner gives his written approval to it before the expiration of
9 the thirty (30) day period.

10 (d) The commissioner may, within thirty (30) days after the filing of
11 any form under subsection (b); disapprove the form:

12 (1) if, in the case of an individual accident and sickness form; the
13 benefits provided therein are unreasonable in relation to the
14 premium charged; or

15 (2) if, in the case of an individual; blanket; or group accident and
16 sickness form; it contains a provision or provisions that are unjust;
17 unfair; inequitable; misleading; or deceptive or that encourage
18 misrepresentation of the policy.

19 (e) If the commissioner notifies the insurer that filed a form that the
20 form does not comply with this section; it is unlawful thereafter for the
21 insurer to issue the form or use it in connection with any policy. In the
22 notice given under this subsection; the commissioner shall specify the
23 reasons for his disapproval and state that a hearing will be granted
24 within twenty (20) days after request in writing by the insurer.

25 (f) The commissioner may at any time; after a hearing of which not
26 less than twenty (20) days written notice has been given to the insurer;
27 withdraw his approval of any form filed under subsection (b) on any of
28 the grounds stated in this section. It is unlawful for the insurer to issue
29 the form or use it in connection with any policy after the effective date
30 of the withdrawal of approval. The notice of any hearing called under
31 this subsection must specify the matters to be considered at the hearing;
32 and any decision affirming disapproval or directing withdrawal of
33 approval under this section must be in writing and must specify the
34 reasons for the decision.

35 (g) Any order or decision of the commissioner under this section is
36 subject to review under IC 4-21.5.

37 SECTION 2. IC 27-8-5-1.5 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2007]: **Sec. 1.5. (a) This section applies to a policy of accident and**
40 **sickness insurance issued on an individual, group, franchise, or**
41 **blanket basis, including a policy issued by an assessment company**
42 **or a fraternal benefit society.**

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- 1 (b) As used in this section, "commissioner" refers to the
- 2 insurance commissioner appointed under IC 27-1-1-2.
- 3 (c) As used in this section, "grossly inadequate filing" means a
- 4 policy form filing:
 - 5 (1) that fails to provide key information, including state
 - 6 specific information, regarding a product, policy, or rate; or
 - 7 (2) that demonstrates an insufficient understanding of
 - 8 applicable legal requirements.
- 9 (d) As used in this section, "policy form" means a policy,
- 10 contract, certificate, rider, endorsement, evidence of coverage, or
- 11 any amendment that is required by law to be filed with the
- 12 commissioner for approval before use in Indiana.
- 13 (e) As used in this section, "type of insurance" refers to a type
- 14 of coverage listed on the National Association of Insurance
- 15 Commissioners Uniform Life, Accident and Health, Annuity and
- 16 Credit Product Coding Matrix, or a successor document, under the
- 17 heading "Continuing Care Retirement Communities", "Health",
- 18 "Long Term Care", or "Medicare Supplement".
- 19 (f) Each person having a role in the filing process described in
- 20 subsection (i) shall act in good faith and with due diligence in the
- 21 performance of the person's duties.
- 22 (g) A policy form may not be issued or delivered in Indiana
- 23 unless the policy form has been filed with and approved by the
- 24 commissioner.
- 25 (h) The commissioner shall do the following:
 - 26 (1) Create a document containing a list of all product filing
 - 27 requirements for each type of insurance, with appropriate
 - 28 citations to the law, administrative rule, or bulletin that
 - 29 specifies the requirement, including the citation for the type
 - 30 of insurance to which the requirement applies.
 - 31 (2) Make the document described in subdivision (1) available
 - 32 on the department of insurance Internet site.
 - 33 (3) Update the document described in subdivision (1) at least
 - 34 annually and not more than thirty (30) days following any
 - 35 change in a filing requirement.
- 36 (i) The filing process is as follows:
 - 37 (1) A filer shall submit a policy form filing that:
 - 38 (A) includes a copy of the document described in
 - 39 subsection (h);
 - 40 (B) indicates the location within the policy form or
 - 41 supplement that relates to each requirement contained in
 - 42 the document described in subsection (h); and

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(C) certifies that the policy form meets all requirements of state law.

(2) The commissioner shall review a policy form filing and, not more than thirty (30) days after the commissioner receives the filing under subdivision (1):

- (A) approve the filing; or
- (B) provide written notice of a determination:
 - (i) that deficiencies exist in the filing; or
 - (ii) that the commissioner disapproves the filing.

A written notice provided by the commissioner under clause (B) must be based only on the requirements set forth in the document described in subsection (h), and must cite the specific requirements not met by the filing. A written notice provided by the commissioner under clause (B)(i) must state the reasons for the commissioner's determination in sufficient detail to enable the filer to bring the policy form into compliance with the requirements not met by the filing.

(3) A filer may resubmit a policy form that:

- (A) was determined deficient under subdivision (2) and has been amended to correct the deficiencies; or
- (B) was disapproved under subdivision (2) and has been revised.

A policy form resubmitted under this subdivision must meet the requirements set forth as described in subdivision (1), and must be resubmitted not more than thirty (30) days after the filer receives the commissioner's written notice of deficiency or disapproval. If a policy form is not resubmitted within thirty (30) days after receipt of the written notice, the commissioner's determination regarding the policy form is final.

(4) The commissioner shall review a policy form filing resubmitted under subdivision (3) and, not more than thirty (30) days after the commissioner receives the resubmission:

- (A) approve the resubmitted policy form; or
- (B) provide written notice that the commissioner disapproves the resubmitted policy form.

A written notice of disapproval provided by the commissioner under clause (B) must be based only on the requirements set forth in the document described in subsection (h), must cite the specific requirements not met by the filing, and must state the reasons for the commissioner's determination in detail. The commissioner's approval or disapproval of a resubmitted

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1 policy form under this subdivision is final, except that the
 2 commissioner may allow the filer to resubmit a further
 3 revised policy form if the filer, in the filer's resubmission
 4 under subdivision (3), introduced new provisions or
 5 materially modified a substantive provision of the policy
 6 form. If the commissioner allows a filer to resubmit a further
 7 revised policy form under this subdivision, the filer must
 8 resubmit the further revised policy form not more than thirty
 9 (30) days after the filer receives notice under clause (B), and
 10 the commissioner shall issue a final determination on the
 11 further revised policy form not more than thirty (30) days
 12 after the commissioner receives the further revised policy
 13 form.

14 (5) If the commissioner disapproves a policy form filing under
 15 this subsection, the commissioner shall notify the filer, in
 16 writing, of the filer's right to a hearing as described in
 17 subsection (m). The policy form may not be disapproved
 18 unless it contains a material error or omission. At any hearing
 19 conducted under this subsection, the commissioner must
 20 prove that the policy form contains a material error or
 21 omission.

22 (j) Except as provided in this subsection, the commissioner may
 23 not disapprove a policy form resubmitted under subsection (i)(3)
 24 or (i)(4) for a reason other than a reason specified in the original
 25 notice of determination under subsection (i)(2)(B). The
 26 commissioner may disapprove a resubmitted policy form for a
 27 reason other than a reason specified in the original notice of
 28 determination under subsection (i)(2) if:

- 29 (1) the filer has introduced a new provision in the
- 30 resubmission;
- 31 (2) the filer has materially modified a substantive provision of
- 32 the policy form in the resubmission;
- 33 (3) there has been a change in requirements applying to the
- 34 policy form; or
- 35 (4) there has been reviewer error and the written disapproval
- 36 fails to state a specific requirement with which the policy form
- 37 does not comply.

38 (k) The commissioner may return a grossly inadequate filing to
 39 the filer without triggering a deadline set forth in this section.

- 40 (l) The commissioner may disapprove a policy form if:
- 41 (1) the benefits provided under the policy form are not
- 42 reasonable in relation to the premium charged; or

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(2) the policy form contains provisions that are unjust, unfair, inequitable, misleading, or deceptive, or that encourage misrepresentation of the policy.

(m) Upon disapproval of a filing under this section, the commissioner shall provide written notice to the filer or insurer of the right to a hearing within twenty (20) days of a request for a hearing.

(n) Unless a policy form approved under this chapter contains a material error or omission, the commissioner may not:

- (1) retroactively disapprove the policy form; or
- (2) examine the filer of the policy form during a routine or targeted market conduct examination for compliance with a policy form filing requirement that was not in existence at the time the policy form was filed.

SECTION 3. IC 27-8-12-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) ~~As used in this section, "compensation" includes pecuniary and nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, the following:~~

- ~~(1) Bonuses;~~
- ~~(2) Gifts;~~
- ~~(3) Prizes;~~
- ~~(4) Awards;~~
- ~~(5) Finders fees;~~

~~(b) (a)~~ An insurer or other entity that provides a commission or other compensation to an insurance producer or other representative for the sale of a long term care insurance policy may not violate the following conditions:

- (1) The amount of the first year commission or first year compensation for selling or servicing the policy may not exceed two hundred percent (200%) of the amount of the commission or other compensation paid in the second year.
- (2) The amount of commission or other compensation provided in years after the second year must be equal to the amount provided in the second year.
- (3) A commission or other compensation must be provided each year for at least five (5) years after the first year.

~~(c) (b)~~ If an existing long term care policy or certificate is replaced, the insurer or other entity that issues the replacement policy may not provide, and its insurance producer may not accept, compensation a commission in an amount greater than the renewal compensation commission payable by the replacing insurer on renewal policies,

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1 unless the benefits of the replacement policy or certificate are clearly
2 and substantially greater than the benefits under the replaced policy or
3 certificate.

4 ~~(d)~~ (c) This section does not apply to the following:

5 (1) Life insurance policies and certificates.

6 (2) A policy or certificate that is sponsored by an employer for the
7 benefit of:

8 (A) the employer's employees; or

9 (B) the employer's employees and their dependents.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1452, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 11, delete "advertisement,".

Page 4, line 4, delete "sixty (60)" and insert "**thirty (30)**".

and when so amended that said bill do pass.

(Reference is to HB 1452 as introduced.)

FRY, Chair

Committee Vote: yeas 7, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1452 be amended to read as follows:

Page 5, delete lines 14 through 16.

Page 5, line 17, delete "is considered approved.", begin a new line block indented and insert:

"(5)".

Page 5, line 19, after "filer" insert "**, in writing,**".

Page 5, line 20, after "(m)." insert "**The policy form may not be disapproved unless it contains a material error or omission. At any hearing conducted under this subsection, the commissioner must prove that the policy form contains a material error or omission.**".

(Reference is to HB 1452 as printed February 20, 2007.)

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