

HOUSE BILL No. 1205

DIGEST OF HB 1205 (Updated February 2, 1998 7:04 pm - DI 97)

Citations Affected: IC 27-1.

Synopsis: Insurance agent as beneficiary of policy. Prohibits an insurance agent from making application for, procuring, negotiating, or placing an individual life insurance policy or individual annuity contract if the agent is designated as the beneficiary of the life insurance policy or annuity contract unless the agent has an insurable interest in the life of the insured or annuitant. Authorizes the insurance commissioner to suspend, revoke, or refuse to renew the license of an insurance agent who violates this prohibition. Provides that an insurance agent who exploits an endangered adult commits an offense subject to disciplinary sanctions. Authorizes the insurance commissioner to order an insurance agent to make restitution. Provides that a person that recklessly violates the Indiana Insurance Law commits a Class A misdemeanor.

Effective: July 1, 1998.

Becker, Fry, Budak, Gregg

January 8, 1998, read first time and referred to Committee on Insurance, Corporations and Small Business.
January 27, 1998, amended, reported — Do Pass.
February 2, 1998, read second time, amended, ordered engrossed.

HB 1205—LS 6755/DI 55



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Reprinted
February 3, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

HOUSE BILL No. 1205

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 27-1-2-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1998]: Sec. 4. A person who recklessly violates
3 the Indiana Insurance Law (chapters 2 through 20 of this article)
4 commits a ~~Class B~~ **Class A** misdemeanor, except as otherwise
5 provided.

6 SECTION 2. IC 27-1-12-14, AS AMENDED BY P.L.253-1995,
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 1998]: Sec]. 14. (a) As used in this section, "premium"
9 includes any deposit or contribution.

10 (b) As used in this section, "proceeds or avails" means death
11 benefits, cash surrender and loan values, premiums waived, and
12 dividends whether used in reduction of the premiums or in whatsoever
13 manner used or applied, excepting only where the debtor has,
14 subsequent to the issuance of the policy, actually elected to receive the
15 dividends in cash.

16 (c) Any person whose life is insured by any life insurance company
17 may name as his payee or beneficiary any person or persons, natural or

HB 1205—LS 6755/DI 55



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1 artificial, with or without an insurable interest, or his estate. ~~Such~~ **A**
 2 designation at the option of the ~~insured~~ **policyowner** may be made
 3 either revocable or irrevocable, and the option elected shall be set out
 4 in and shall be made a part of the application for the certificate or
 5 policy of insurance. When the right of revocation has been reserved,
 6 the person whose life is insured, subject to any existing assignment of
 7 the policy, may at any time designate a new payee or beneficiary, with
 8 or without reserving the right of revocation, by filing written notice
 9 thereof at the home office of the corporation, accompanied by the
 10 policy for suitable indorsement thereon.

11 (d) Any person may effect an insurance on his life, for any definite
 12 period of time, or for the term of his natural life, to inure to the sole
 13 benefit of the spouse and children, or of either, or other relative or
 14 relatives dependent upon such person or any creditor or creditors as he
 15 may cause to be appointed and provided in the policy.

16 (e) Except as provided in subsection (g), all policies of life
 17 insurance upon the life of any person, which name as beneficiary, or
 18 are bona fide assigned to, the spouse, children, or any relative
 19 dependent upon such person, or any creditor, shall be held, subject to
 20 change of beneficiary from time to time, if desired, for the benefit of
 21 such spouse, children, other relative or creditor, free and clear from all
 22 claims of the creditors of such insured person or of the person's spouse;
 23 and the proceeds or avails of all such life insurance shall be exempt
 24 from all liabilities from any debt or debts of such insured person or of
 25 the person's spouse.

26 (f) A premium paid for an individual life insurance policy that
 27 names as a beneficiary, or is legally assigned to, a spouse, child, or
 28 relative who is dependent upon the policy owner is not exempt from the
 29 claims of the creditors of the policy owner if the premium is paid:

- 30 (1) not more than one (1) year before the date of the filing of a
 31 voluntary or involuntary bankruptcy petition by; or
 32 (2) to defraud the creditors of;
 33 the policy owner.

34 (g) The insurer issuing the policy is discharged from all liability by
 35 payment of the proceeds and avails of the policy in accordance with the
 36 terms of the policy unless, before payment, the insurer has received at
 37 the insurer's home office, written notice by or on behalf of a creditor of
 38 the policy owner that specifies the amount claimed against the policy
 39 owner.

40 SECTION 3. IC 27-1-15.5-8, AS AMENDED BY P.L.253-1997(ss),
 41 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 1998]: Sec. 8. (a) The commissioner may suspend, revoke,

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1 refuse to continue, renew, or issue any license issued under this
2 chapter, or impose any of the disciplinary sanctions under subsection
3 (f) if, after notice to the licensee and to the insurer represented and a
4 hearing, the commissioner finds as to the licensee any one (1) or more
5 of the following conditions:

- 6 (1) Any materially untrue statement in the license application.
7 (2) Any cause for which issuance of the license could have been
8 refused had it then existed and been known to the commissioner
9 at the time of issuance.
10 (3) Violation of or noncompliance with any insurance laws,
11 violation of any provision of IC 28 concerning the sale of a life
12 insurance policy or an annuity contract, or violation of any lawful
13 rule, regulation, or order of the commissioner or of a
14 commissioner of another state.
15 (4) Obtaining or attempting to obtain any such license through
16 misrepresentation or fraud.
17 (5) Improperly withholding, misappropriating, or converting to
18 the licensee's own use any money belonging to policyholders,
19 insurers, beneficiaries, or others received in the course of the
20 licensee's insurance business.
21 (6) Misrepresentation of the terms of any actual or proposed
22 insurance contract.
23 (7) Conviction of a felony or misdemeanor involving moral
24 turpitude.
25 (8) The licensee has been found guilty of any unfair trade practice
26 or of fraud.
27 (9) In the conduct of the licensee's affairs under the license, the
28 licensee has used fraudulent, coercive, or dishonest practices, or
29 has shown himself to be incompetent, untrustworthy, or
30 financially irresponsible, or not performing in the best interests of
31 the insuring public.
32 (10) The licensee's license has been suspended or revoked in any
33 other state, province, district, or territory.
34 (11) The licensee has forged another's name to an application for
35 insurance.
36 (12) An applicant has been found to have been cheating on an
37 examination for an insurance license.
38 (13) The applicant or licensee is on the most recent tax warrant
39 list supplied to the commissioner by the department of state
40 revenue.
41 (14) The licensee has failed to satisfy the continuing education
42 requirements under section 7.1 of this chapter.

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1 **(15) The licensee has violated section 24 of this chapter.**

2 **(16) In the conduct of the licensee's affairs under the license,**
 3 **the licensee has exploited an endangered adult (as defined in**
 4 **IC 12-10-3-2(a)(1) and IC 12-10-3-2(a)(2)).**

5 (b) The commissioner shall refuse to:

6 (1) issue a license; or

7 (2) renew a license issued;

8 under this chapter to any person who is the subject of an order issued
 9 by a court under IC 31-14-12-7 or IC 31-16-12-10 (or
 10 IC 31-1-11.5-13(m) or IC 31-6-6.1-16(m) before their repeal).

11 (c) In the event that the action by the commissioner is to not renew
 12 or to deny an application for a license, the commissioner shall notify
 13 the applicant or licensee and advise, in writing, the applicant or
 14 licensee of the reasons for the denial or nonrenewal of the applicant's
 15 or licensee's license. Not later than sixty (60) days after receiving a
 16 notice from the commissioner under this subsection, the applicant or
 17 licensee may make written demand upon the commissioner for a
 18 hearing to determine the reasonableness of the commissioner's action.
 19 Such hearing shall be held within thirty (30) days from the date of
 20 receipt of the written demand of the applicant.

21 (d) The license of a corporation may be suspended, revoked, or
 22 refused if the commissioner finds, after hearing, that an individual
 23 licensee's violation was known or should have been known by one (1)
 24 or more of the officers or managers acting on behalf of the corporation
 25 and such violation was not reported to the insurance department nor
 26 corrective action taken in relation to the violation.

27 (e) In addition to or in lieu of any applicable denial, suspension, or
 28 revocation of a license, any person violating this chapter may, after
 29 hearing, be subject to a civil penalty of not less than fifty dollars (\$50)
 30 nor more than ten thousand dollars (\$10,000). Such a penalty may be
 31 enforced in the same manner as civil judgments.

32 (f) The commissioner may impose any of the following sanctions,
 33 singly or in combination, when the commissioner finds that a licensee
 34 is guilty of any offense under subsection (a):

35 (1) Permanently revoke (as defined in subsection (h)) a licensee's
 36 certificate.

37 (2) Revoke a licensee's certificate with a stipulation that the
 38 licensee may not reapply for a certificate for a period fixed by the
 39 commissioner. The fixed period may not exceed ten (10) years.

40 (3) Suspend a licensee's certificate.

41 (4) Censure a licensee.

42 (5) Issue a letter of reprimand.



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- 1 (6) Place a licensee on probation status and require the licensee
 2 to:
 3 (A) report regularly to the commissioner upon the matters that
 4 are the basis of probation;
 5 (B) limit practice to those areas prescribed by the
 6 commissioner; or
 7 (C) continue or renew professional education under a licensee
 8 approved by the commissioner until a satisfactory degree of
 9 skill has been attained in those areas that are the basis of the
 10 probation.

11 The commissioner may withdraw the probation if the
 12 commissioner finds that the deficiency that required disciplinary
 13 action has been remedied.

14 **(7) Order the licensee to make restitution.**

15 (g) The insurance commissioner shall notify the securities
 16 commissioner when an administrative action or civil proceeding is filed
 17 under this section and when an order is issued under this section
 18 denying, suspending, or revoking a license.

19 (h) For purposes of subsection (f), "permanently revoke" means that
 20 the licensee's certificate shall never be reinstated and the licensee shall
 21 not be eligible to submit an application for a certificate to the
 22 department.

23 SECTION 4. IC 27-1-15.5-24 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 1998]: **Sec. 24. (a) As used in this section,**
 26 **"annuity contract" means an individual annuity contract.**

27 **(b) As used in this section, "life insurance policy" means an**
 28 **insurance policy that:**

- 29 (1) provides the type of insurance described in Class 1(a) of
 30 IC 27-1-5-1; and
 31 (2) is written on an individual basis.

32 **(c) An agent may not:**

- 33 (1) make application for;
 34 (2) procure;
 35 (3) negotiate; or
 36 (4) place;

37 **an individual life insurance policy or individual annuity contract**
 38 **described in Class 1(a) and Class 1(c) of IC 27-1-5-1 on the life of**
 39 **an individual unless the agent has an insurable interest in the life**
 40 **of the insured or annuitant.**



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1205, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-12-14, AS AMENDED BY P.L.253-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec]. 14. (a) As used in this section, "premium" includes any deposit or contribution.

(b) As used in this section, "proceeds or avails" means death benefits, cash surrender and loan values, premiums waived, and dividends whether used in reduction of the premiums or in whatsoever manner used or applied, excepting only where the debtor has, subsequent to the issuance of the policy, actually elected to receive the dividends in cash.

(c) ~~Any person whose life is insured by any life insurance company may name as his payee or beneficiary any person or persons, natural or artificial; with or without an insurable interest; or his estate. A corporation, association, or society shall not issue any life insurance, policy of life insurance, policy, or annuity contract in which the payee or beneficiary named has no insurable interest. Any assignment of a policy or certificate to a person having no insurable interest, except as security for actual debt with remainder over to the beneficiary or to the estate of the insured, renders the policy or certificate void.~~

~~(d) Such~~ **A designation of a person as a payee or beneficiary under subsection (c)** at the option of the insured may be made either revocable or irrevocable, and the option elected shall be set out in and shall be made a part of the application for the certificate or policy of insurance. When the right of revocation has been reserved, the person whose life is insured, subject to any existing assignment of the policy, may at any time designate a new payee or beneficiary, with or without reserving the right of revocation, by filing written notice thereof at the home office of the corporation, accompanied by the policy for suitable indorsement thereon.

~~(d)~~ **(e)** Any person may effect an insurance on his life, for any definite period of time, or for the term of his natural life, to inure to the sole benefit of the spouse and children, or of either, or other relative or relatives dependent upon such person or any creditor or creditors as he may cause to be appointed and provided in the policy.

HB 1205—LS 6755/DI 55



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~~(e)~~ (f) Except as provided in subsection ~~(g)~~; (h), all policies of life insurance upon the life of any person, which name as beneficiary, or are bona fide assigned to, the spouse, children, or any relative dependent upon such person, or any creditor, shall be held, subject to change of beneficiary from time to time, if desired, for the benefit of such spouse, children, other relative or creditor, free and clear from all claims of the creditors of such insured person or of the person's spouse; and the proceeds or avails of all such life insurance shall be exempt from all liabilities from any debt or debts of such insured person or of the person's spouse.

~~(f)~~ (g) A premium paid for an individual life insurance policy that names as a beneficiary, or is legally assigned to, a spouse, child, or relative who is dependent upon the policy owner is not exempt from the claims of the creditors of the policy owner if the premium is paid:

- (1) not more than one (1) year before the date of the filing of a voluntary or involuntary bankruptcy petition by; or
- (2) to defraud the creditors of;

the policy owner.

~~(g)~~ (h) The insurer issuing the policy is discharged from all liability by payment of the proceeds and avails of the policy in accordance with the terms of the policy unless, before payment, the insurer has received at the insurer's home office, written notice by or on behalf of a creditor of the policy owner that specifies the amount claimed against the policy owner."

Page 4, line 14, after "not" insert ", **unless the agent has an insurable interest**".

Page 4, after line 21 begin a new paragraph and insert:

"SECTION 4. IC 27-8-3-8 IS REPEALED [EFFECTIVE JULY 1, 1998]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1205 as introduced.)

FRY, Chair

Committee Vote: yeas 11, nays 0.



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HOUSE MOTION

Mr. Speaker: I move that House Bill 1205 be amended to read as follows:

Page 1, line 11, reset in roman "Any person whose life is insured by any life insurance company".

Page 1, reset in roman line 12.

Page 1, line 13, reset in roman "artificial, with or without an insurable interest, or his estate.".

Page 1, line 13, delete "A".

Page 1, delete lines 14 through 17.

Page 2, delete lines 1 through 3.

Page 2, line 4, delete "(d)".

Page 2, line 4, delete "of a person as a payee or beneficiary".

Page 2, line 5, delete "under subsection (c)".

Page 2, line 5, strike "insured" and insert "**policyowner**".

Page 2, line 14, reset in roman "(d)".

Page 2, line 14, delete "(e)".

Page 2, line 19, reset in roman "(e)".

Page 2, line 19, delete "(f)".

Page 2, line 19, reset in roman "(g)".

Page 2, line 19, delete "(h)".

Page 2, line 29, reset in roman "(f)".

Page 2, line 29, delete "(g)".

Page 2, line 37, reset in roman "(g)".

Page 2, line 37, delete "(h)".

Page 5, line 31, delete ", unless the agent has an insurable interest".

Page 5, line 36, delete "a" and insert "**an individual**".

Page 5, line 36, delete "an" and insert "**individual**".

Page 5, line 36, after "contract" insert "**described in Class 1(a) and Class 1(c) of IC 27-1-5-1 on the life of an individual**".

Page 5, line 36, delete "if" and insert "**unless**".

Page 5, line 36, delete "is" and insert "**has an insurable interest in the life of the insured or annuitant**".

Page 5, delete lines 37 through 40.

(Reference is to House Bill 1205 as printed January 28, 1998.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1205 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. A person who recklessly violates the Indiana Insurance Law (chapters 2 through 20 of this article) commits a ~~Class B~~ **Class A** misdemeanor, except as otherwise provided."

Page 4, between lines 4 and 5, begin a new line block indented and insert:

"(16) In the conduct of the licensee's affairs under the license, the licensee has exploited an endangered adult (as defined in IC 12-10-3-2(a)(1) and IC 12-10-3-2(a)(2))."

Page 5, between lines 13 and 14, begin a new line block indented and insert:

"(7) Order the licensee to make restitution."

Renumber all SECTIONS consecutively.

(Reference is to House Bill 1205 as printed January 28, 1998.)

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