

HOUSE BILL No. 1286

DIGEST OF HB 1286 (Updated January 29, 1998 5:53 pm - DI 47)

Citations Affected: IC 27-1; IC 27-12; noncode.

Synopsis: Medical malpractice. Permits a medical malpractice insurer to settle the liability of the insured without the consent of the insured if there was a unanimous medical review panel opinion against the insured. Requires a health care provider to carry a policy of malpractice liability insurance of at least \$250,000 per occurrence and \$750,000 in the annual aggregate in order to be covered under the medical malpractice act. (Current law requires policy limits of \$100,000 per occurrence and \$300,000 in the annual aggregate.) Requires a hospital to carry a policy of malpractice liability insurance of at least \$5,000,000 in the annual aggregate if the hospital has 100 or fewer beds, and a policy of at least \$7,500,000 in the annual aggregate if the hospital has more than 100 beds. (Current law provides limits of \$2,000,000 and \$3,000,000, respectively.) Increases from \$25 to \$100 the minimum annual surcharge each health care provider is required to (Continued next page)

Effective: Upon passage; July 1, 1998; January 1, 1999; July 1, 1999.

Fry, M. Smith, Torr, Fesko

January 13, 1998, read first time and referred to Committee on Insurance, Corporations and Small Business.

January 22, 1998, amended, reported — Do Pass.

January 29, 1998, read second time, amended, ordered engrossed.

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Digest Continued

pay. Provides methods for the commissioner of the department of insurance to calculate the annual surcharge for physicians and hospitals. Requires the commissioner to pay an attorney to protect the patient compensation fund. Provides that the commissioner has sole authority for making decisions regarding the settlement of claims against the patient compensation fund and determining the reasonableness of any fee submitted by an attorney who defends the patient compensation fund. Allows a malpractice claimant to initiate a confidential action in court at the same time the claimant's proposed complaint is being considered by a medical review panels. Specifies the circumstances under which the name of a negligent health care provider must be referred to the appropriate board of professional registration. Requires the commissioner to order a hearing on the motion of a party or on the commissioner's own initiative to dismiss a case before the department of insurance if no action has been taken in the case for at least two years. Requires an attorney to complete at least 12 hours of continuing legal education in matters relating to the administration of medical malpractice cases in order to serve as a medical review panel chairman in cases where the parties are unable to select a panel chairman by agreement. Increases from \$1,250 to \$2,000 the maximum a medical review panel chairman may be paid. Increases the maximum amount recoverable for an injury or death of a patient from \$750,000 to \$1,250,000 for an act of malpractice that occurs after December 31, 1998. Increases from \$100,000 to \$250,000 the maximum amount for which a qualified provider may be held liable for an act of malpractice. Repeals a provision allowing the commissioner to decrease the amount of the surcharge paid by providers if the patient compensation fund maintains a balance of at least \$125,000,000 at the end of two consecutive 6 month periods.

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Reprinted
January 30, 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. 1286

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 27-1-13-7 IS AMENDED TO READ AS
2 FOLLOWS: Sec. 7. No policy of insurance against loss or damage
3 resulting from accident to, or death or injury suffered by, an employee
4 or other person or persons and for which the person or persons insured
5 are liable, or, against loss or damage to property resulting from
6 collision with any moving or stationary object and for which loss or
7 damage the person or persons insured is liable, shall be issued or
8 delivered in this state by any domestic or foreign corporation, insurance
9 underwriters, association, or other insurer authorized to do business in
10 this state, unless there shall be contained within such policy a provision
11 that the insolvency or bankruptcy of the person or persons insured shall
12 not release the insurance carrier from the payment of damages for
13 injury sustained or loss occasioned during the life of such policy, and
14 stating that in case execution against the insured is returned unsatisfied
15 in an action brought by the injured person or his or her personal

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1 representative in case death resulted from the accident because of such
2 insolvency or bankruptcy then an action may be maintained by the
3 injured person, or his or her personal representative, against such
4 domestic or foreign corporation, insurance underwriters, association or
5 other insurer under the terms of the policy for the amount of the
6 judgment in the said action not exceeding the amount of the policy. No
7 such policy shall be issued or delivered in this state by any foreign or
8 domestic corporation, insurance underwriters, association or other
9 insurer authorized to do business in this state, unless there shall be
10 contained within such policy a provision that notice given by or on
11 behalf of the insured to any authorized agent of the insurer within this
12 state, with particulars sufficient to identify the insured, shall be deemed
13 to be notice to the insurer. No such policy shall be issued or delivered
14 in this state to the owner of a motor vehicle, by any domestic or foreign
15 corporation, insurance underwriters, association or other insurer
16 authorized to do business in this state, unless there shall be contained
17 within such policy a provision insuring such owner against liability for
18 damages for death or injury to person or property resulting from
19 negligence in the operation of such motor vehicle, in the business of
20 such owner or otherwise, by any person legally using or operating the
21 same with the permission, expressed or implied, of such owner. **No**
22 **policy of insurance shall be issued or delivered in this state by any**
23 **foreign or domestic corporation, insurance underwriters,**
24 **association or other insurer authorized to do business in this state,**
25 **unless it contains a provision that authorizes such foreign or**
26 **domestic corporation, insurance underwriters, association or other**
27 **insurer authorized to do business in this state to settle the liability**
28 **of its insured under IC 27-12 et seq. without the consent of its**
29 **insured when the unanimous opinion of the medical review panel**
30 **is not in favor of the insured. This provision applies to all medical**
31 **malpractice insurance policies issued or renewed after January 1,**
32 **1999.** If a motor vehicle is owned jointly by a husband and wife, either
33 spouse may, with the written consent of the other spouse, be excluded
34 from coverage under the policy. A husband and wife may choose
35 instead to have their liability covered under separate policies. A policy
36 issued in violation of this section shall, nevertheless, be held valid but
37 be deemed to include the provisions required by this section, and when
38 any provision in such policy or rider is in conflict with the provision
39 required to be contained by this section, the rights, duties and
40 obligations of the insurer, the policyholder and the injured person or
41 persons shall be governed by the provisions of this section.

42 SECTION 2. IC 27-12-2-24.5 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 1998]: **Sec. 24.5. "Qualified provider" means**
 3 **a health care provider that is qualified under this article by**
 4 **complying with the procedures set forth in IC 27-12-3.**

5 SECTION 3. IC 27-12-4-1, AS AMENDED BY P.L.26-1994,
 6 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 1999]: Sec. 1. Financial responsibility of a health care
 8 provider and the provider's officers, agents, and employees while acting
 9 in the course and scope of their employment with the health care
 10 provider may be established under subdivision (1), (2), or (3):

11 (1) By the health care provider's insurance carrier filing with the
 12 commissioner proof that the health care provider is insured by a
 13 policy of malpractice liability insurance in the amount of at least
 14 ~~one two~~ **two fifty** thousand dollars (~~\$100,000~~) (**\$250,000**)
 15 per occurrence and ~~three seven~~ **three seven** hundred **fifty** thousand dollars
 16 (~~\$300,000~~) (**\$750,000**) in the annual aggregate, except for the
 17 following:

18 (A) If the health care provider is a hospital, as defined in this
 19 article, the minimum annual aggregate insurance amount is as
 20 follows:

21 (i) For hospitals of not more than one hundred (100) beds,
 22 ~~two five~~ million dollars (~~\$2,000,000~~): (**\$5,000,000**).

23 (ii) For hospitals of more than one hundred (100) beds, ~~three~~
 24 **seven** million **five hundred thousand** dollars (~~\$3,000,000~~):
 25 (**\$7,500,000**).

26 (B) If the health care provider is a health maintenance
 27 organization (as defined in IC 27-13-1-19) or a limited service
 28 health maintenance organization (as defined in
 29 IC 27-13-34-4), the minimum annual aggregate insurance
 30 amount is seven hundred thousand dollars (\$700,000).

31 (C) If the health care provider is a health facility, the minimum
 32 annual aggregate insurance amount is as follows:

33 (i) For health facilities with not more than one hundred
 34 (100) beds, three hundred thousand dollars (\$300,000).

35 (ii) For health facilities with more than one hundred (100)
 36 beds, five hundred thousand dollars (\$500,000).

37 (2) By filing and maintaining with the commissioner cash or
 38 surety bond approved by the commissioner in the amounts set
 39 forth in subdivision (1).

40 (3) If the health care provider is a hospital or a psychiatric
 41 hospital, by submitting annually a verified financial statement
 42 that, in the discretion of the commissioner, adequately

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1 demonstrates that the current and future financial responsibility
 2 of the health care provider is sufficient to satisfy all potential
 3 malpractice claims incurred by the provider or the provider's
 4 officers, agents, and employees while acting in the course and
 5 scope of their employment up to a total of ~~one two~~ **two hundred fifty**
 6 ~~thousand dollars (\$100,000)~~ **thousand dollars (\$250,000)** per occurrence and
 7 annual aggregates as follows:

8 (A) For hospitals of not more than one hundred (100) beds,
 9 ~~two five~~ **million dollars (\$2,000,000): (\$5,000,000).**

10 (B) For hospitals of more than one hundred (100) beds, ~~three~~
 11 ~~seven~~ **million five hundred thousand dollars (\$3,000,000):**
 12 **(\$7,500,000).**

13 The commissioner may require the deposit of security to assure
 14 continued financial responsibility.

15 SECTION 4. IC 27-12-5-2 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **As used in**
 17 **this section, "actuarial program" means a program used or**
 18 **created by the department to determine the actuarial risk posed to**
 19 **the patient compensation fund under IC 27-12-6 by a hospital. The**
 20 **program must be:**

- 21 (1) **developed to calculate actuarial risk;**
 22 (2) **an efficient and accurate means of calculating a hospital's**
 23 **malpractice actuarial risk; and**
 24 (3) **publicly identified by the department by July 1 of each**
 25 **year.**

26 (b) The amount of the annual surcharge shall be set by a rule
 27 adopted by the commissioner under IC 4-22-2.

28 ~~(b)~~ (c) The amount of the surcharge shall be determined based upon
 29 actuarial principles and actuarial studies and must be adequate for the
 30 payment of claims and expenses from the patient's compensation fund.

31 ~~(c)~~ (d) The surcharge may not exceed two hundred percent (200%)
 32 of the cost to each health care provider, **except for a physician**
 33 **licensed under IC 25-22.5 and a hospital licensed under IC 16-21**
 34 **for maintenance of financial responsibility.**

35 ~~(d)~~ (e) There is imposed a minimum annual surcharge of ~~twenty-five~~
 36 **one hundred** dollars ~~(\$25): (\$100).~~

37 (f) **Notwithstanding subsections (b), (c), and (e), beginning July**
 38 **1, 1999, the surcharge for a qualified provider who is licensed**
 39 **under IC 25-22.5 is calculated as follows:**

- 40 (1) **The commissioner shall contract with an actuary that has**
 41 **experience in calculating the actuarial risks posed by**
 42 **physicians. Not later than July 1 of each year, the actuary**



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1 shall calculate the median of the premiums paid for
 2 malpractice liability policies to the three (3) malpractice
 3 insurance carriers in the state that have underwritten the
 4 most malpractice insurance policies for all physicians
 5 practicing in the same specialty class or discipline in Indiana
 6 during the previous twelve (12) month period. In calculating
 7 the median, the actuary shall consider the:

8 (A) manual rates of the three (3) leading malpractice
 9 insurance carriers in the state; and

10 (B) aggregate credits or debits to the manual rates given
 11 during the previous twelve (12) month period.

12 (2) After making the calculation described in subdivision (1),
 13 the actuary shall establish a uniform surcharge for all
 14 licensed physicians practicing in the same medical specialty or
 15 discipline. This surcharge must be based on a percentage of
 16 the median calculated in subdivision (1) for all licensed
 17 physicians practicing in the same medical specialty or
 18 discipline under rules adopted by the commissioner under
 19 IC 4-22-2. The surcharge:

20 (A) must be sufficient to cover; and

21 (B) may not exceed;

22 the actuarial risk posed to the patient compensation fund
 23 under IC 27-12-6 by physicians practicing in the medical
 24 specialty or discipline.

25 (g) Beginning July 1, 1999, the surcharge for a hospital licensed
 26 under IC 16-21 that establishes financial responsibility under
 27 IC 27-12-4 after June 30, 1999, is established through the use of an
 28 actuarial program. At the time financial responsibility is
 29 established for the hospital, the hospital shall pay the surcharge
 30 amount established for the hospital under this section. The
 31 surcharge:

32 (1) must be sufficient to cover; and

33 (2) may not exceed;

34 the actuarial risk posed to the patient compensation fund under
 35 IC 27-12-6 by the hospital.

36 SECTION 5. IC 27-12-6-2 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The
 38 commissioner, using money from the fund, as considered necessary,
 39 appropriate, or desirable, may purchase **or retain** the services of
 40 persons, firms, and corporations to aid in protecting the fund against
 41 claims.

42 (b) When retaining legal services under subsection (a), the

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1 commissioner shall retain competent and experienced legal counsel
2 licensed to practice law in Indiana to assist in litigation or other
3 matters pertaining to the fund.

4 (c) The commissioner has sole authority for the following:

5 (1) Making a decision regarding the settlement of a claim
6 against the patient compensation fund.

7 (2) Determining the reasonableness of any fee submitted to the
8 department of insurance by an attorney who defends the
9 patient compensation fund under this section.

10 (d) All expenses of collecting, protecting, and administering the
11 fund shall be paid from the fund.

12 SECTION 6. IC 27-12-8-7 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 1998]: **Sec. 7. Notwithstanding section 4 of this chapter,**
15 **beginning July 1, 1999, a claimant may commence an action in**
16 **court for malpractice at the same time the claimant's proposed**
17 **complaint is being considered by a medical review panel. In order**
18 **to comply with this section, the:**

19 (1) complaint filed in court may not contain information that
20 would allow a third party to identify the defendant;

21 (2) claimant is prohibited from pursuing the action; and

22 (3) court is prohibited from taking any action except setting
23 a date for trial, an action under IC 27-12-8-8, or an action
24 under IC 27-12-11;

25 until section 4 of this chapter has been satisfied.

26 SECTION 7. IC 27-12-8-8 IS ADDED TO THE INDIANA CODE
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
28 UPON PASSAGE]: **Sec. 8. If action has not been taken in a case**
29 **before the department of insurance for a period of at least two (2)**
30 **years, the commissioner, on the:**

31 (1) motion of a party; or

32 (2) commissioner's own initiative;

33 may file a motion in Marion County Circuit Court to dismiss the
34 case under Rule 41(E) of the Indiana Rules of Trial Procedure.

35 SECTION 8. IC 27-12-9-4 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 4. (a) Subject to**
37 **subsection (d), the commissioner shall forward the name of every**
38 **health care provider, except a hospital, against whom a settlement is**
39 **made or judgment is rendered under this article to the appropriate**
40 **board of professional registration and examination for review of the**
41 **fitness of the health care provider to practice the health care provider's**
42 **profession. In each case involving review of a health care provider's**

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1 fitness to practice forwarded under this section, the appropriate board
 2 of professional registration and examination may, in appropriate cases,
 3 take the following disciplinary action:

- 4 (1) censure;
 5 (2) imposition of probation for a determinate period;
 6 (3) suspension of the health care provider's license for a
 7 determinate period; or
 8 (4) revocation of the license.

9 (b) Review of the health care provider's fitness to practice shall be
 10 conducted in accordance with IC 4-21.5.

11 (c) The appropriate board of professional registration and
 12 examination shall report to the commissioner the board's findings, the
 13 action taken, and the final disposition of each case involving review of
 14 a health care provider's fitness to practice forwarded under this section.

15 **(d) The commissioner shall forward the name of a health care**
 16 **provider under subsection (a) only if the medical review panel**
 17 **reviewing the health care provider under IC 27-12-10-22 has**
 18 **unanimously determined that the appropriate board of**
 19 **professional registration should examine the health care provider's**
 20 **fitness to practice.**

21 (e) A medical review panel determination made under
 22 subsection (d):

- 23 **(1) must be a separate opinion from the medical review panel**
 24 **opinion under IC 27-12-10-22; and**
 25 **(2) is not admissible as evidence in a civil action.**

26 SECTION 9. IC 27-12-10-25 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 25. (a) Each
 28 health care provider member of the medical review panel is entitled to
 29 be paid:

- 30 (1) up to three hundred fifty dollars (\$350) for all work performed
 31 as a member of the panel, exclusive of time involved if called as
 32 a witness to testify in court; and
 33 (2) reasonable travel expense.

34 (b) The chairman of the panel is entitled to be paid:

- 35 (1) at the rate of two hundred fifty dollars (\$250) per diem, not to
 36 exceed ~~one thousand two hundred fifty dollars (\$1,250);~~
 37 **(\$2,000);** and
 38 (2) reasonable travel expenses.

39 (c) The chairman shall keep an accurate record of the time and
 40 expenses of all the members of the panel. The record shall be submitted
 41 to the parties for payment with the panel's report.

42 (d) Fees of the panel, including travel expenses and other expenses

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1 of the review, shall be paid by the side in whose favor the majority
 2 opinion is written. If there is no majority opinion, each side shall pay
 3 ~~one-half (1/2)~~ **fifty percent (50%)** of the cost.

4 SECTION 10. IC 27-12-14-3 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The total amount
 6 recoverable for an injury or death of a patient may not exceed **the**
 7 **following:**

8 (1) Five hundred thousand dollars (\$500,000) ~~except that, as to~~
 9 ~~for~~ **for** an act of malpractice that occurs ~~on or after~~ **before** January 1,
 10 1990. ~~the total amount recovered for an injury or death may not~~
 11 ~~exceed~~

12 (2) Seven hundred fifty thousand dollars (\$750,000) **for an act of**
 13 **malpractice that occurs:**

14 (A) **after December 31, 1989; and**

15 (B) **before July 1, 1999.**

16 (3) **One million two hundred fifty thousand dollars**
 17 **(\$1,250,000) for an act of malpractice that occurs after June**
 18 **30, 1999.**

19 (b) A health care provider qualified under this article is not liable
 20 for an amount in excess of ~~one two~~ **two hundred fifty** thousand dollars
 21 ~~(\$100,000)~~ **(\$250,000)** for an occurrence of malpractice.

22 (c) Any amount due from a judgment or settlement that is in excess
 23 of the total liability of all liable health care providers, subject to
 24 subsections (a), (b), and (d), shall be paid from the patient's
 25 compensation fund under IC 27-12-15.

26 (d) If a health care provider qualified under this article admits
 27 liability or is adjudicated liable solely by reason of the conduct of
 28 another health care provider who is an officer, agent, or employee of
 29 the health care provider acting in the course and scope of employment
 30 and qualified under this article, the total amount that shall be paid to
 31 the claimant on behalf of the officer, agent, or employee and the health
 32 care provider by the health care provider or its insurer is ~~one two~~
 33 ~~hundred fifty~~ **hundred fifty** thousand dollars ~~(\$100,000);~~ **(\$250,000)**. The balance of
 34 an adjudicated amount to which the claimant is entitled shall be paid
 35 by other liable health care providers or the patient's compensation fund,
 36 or both.

37 SECTION 11. IC 27-12-14-4 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) If the possible
 39 liability of the health care provider to the patient is discharged solely
 40 through an immediate payment, the limitations on recovery from a
 41 health care provider stated in section 3(b) and 3(d) of this chapter apply
 42 without adjustment.



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1 (b) If the health care provider agrees to discharge its possible
 2 liability to the patient through a periodic payments agreement, the
 3 amount of the patient's recovery from a health care provider in a case
 4 under this subsection is the amount of any immediate payment made by
 5 the health care provider or the health care provider's insurer to the
 6 patient, plus the cost of the periodic payments agreement to the health
 7 care provider or the health care provider's insurer. For the purpose of
 8 determining the limitations on recovery stated in section 3(b) and 3(d)
 9 of this chapter and for the purpose of determining the question under
 10 IC 27-12-15-3 of whether the health care provider or the health care
 11 provider's insurer has agreed to settle its liability by payment of its
 12 policy limits, the sum of:

13 (1) the present payment of money to the patient (or the patient's
 14 estate) by the health care provider (or the health care provider's
 15 insurer); plus

16 (2) the cost of the periodic payments agreement expended by the
 17 health care provider (or the health care provider's insurer);
 18 must exceed ~~seventy-five~~ **one hundred eighty-seven** thousand dollars
 19 ~~(\$75,000)~~. **(\$187,000)**.

20 (c) More than one (1) health care provider may contribute to the cost
 21 of a periodic payments agreement, and in such an instance the sum of
 22 the amounts expended by each health care provider for immediate
 23 payments and for the cost of the periodic payments agreement shall be
 24 used to determine whether the ~~seventy-five~~ **one hundred eighty-seven**
 25 thousand dollar ~~(\$75,000)~~ **(\$187,000)** requirement in subsection (b) has
 26 been satisfied. However, one (1) health care provider or its insurer
 27 must be liable for at least fifty thousand dollars (\$50,000).

28 SECTION 12. IC 27-12-6-3 IS REPEALED [EFFECTIVE
 29 JANUARY 1, 1999].

30 SECTION 13. [EFFECTIVE UPON PASSAGE] (a) **After the**
 31 **department establishes the annual surcharge for physicians under**
 32 **IC 27-12-5-2, as amended by this act, the department shall publish**
 33 **in the Indiana Register an estimated surcharge for all physicians**
 34 **practicing in the same medical specialty or discipline.**

35 (b) **The department of insurance shall publish the estimated**
 36 **surcharges under subsection (a) in the Indiana Register not later**
 37 **than February 1, 1999.**

38 (c) **This SECTION expires January 1, 2000.**

39 SECTION 14. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1286, 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 3, delete "commercially available".

Page 3, line 4, after "used" insert "**or created**".

Page 3, line 8, delete "widely recognized as being".

Page 4, line 13, delete "by the department".

Page 4, line 14, delete "The surcharge".

Page 4, delete lines 15 through 16.

Page 4, line 17, delete "the department under subsection (h)".

Page 4, delete lines 25 through 42.

Page 5, delete lines 1 through 25.

Page 5, line 28, reset in roman "as considered necessary,".

Page 5, line 29, reset in roman line 29.

Page 5, line 29, after "purchase" insert "**or retain**".

Page 5, line 30, reset in roman "and corporations to aid in protecting".

Page 5, line 30, delete "shall pay an attorney who is".

Page 5, line 31, delete "licensed to practice law in Indiana to protect".

Page 5, line 31, after "claims" insert ".".

Page 5, delete lines 32 through 42, begin a new paragraph and insert:

"(b) When retaining legal services under subsection (a), the commissioner shall retain competent and experienced legal counsel licensed to practice law in Indiana to assist in litigation or other matters pertaining to the fund."

Page 6, delete lines 1 through 2.

Page 6, line 3, delete "(b)" and insert "(c)".

Page 6, line 9, delete "(c)" and insert "(d)".

Page 6, line 18, delete "any".

Page 6, line 21, after "except" insert "**setting a date for trial, an action under IC 27-12-8-8, or**".

Page 6, line 25, delete "JULY" and insert "UPON PASSAGE]".

Page 6, line 26, delete "1, 1998]".

Page 6, line 26, delete "(a) Beginning July 1, 1999, if" and insert "**If**".

Page 6, delete lines 31 through 42, begin a new line blocked left and insert: "**may file a motion in Marion County Circuit Court to dismiss the case under Rule 41(E) of the Indiana Rules of Trial**

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Procedure."

Delete page 7.

Page 8, delete lines 1 through 21.

Page 10, delete lines 26 through 30.

Page 10, line 31, delete "The actuary" and insert "**After the department**".

Page 10, line 32, delete "that".

Page 10, line 33, after "act," insert "**the department**".

Page 10, line 33, delete "provide" and insert "**publish in the Indiana Register**".

Page 10, line 35, delete "to the department of insurance not later than" and insert ".".

Page 10, delete line 36.

Page 10, line 37, delete "mail" and insert "**publish**".

Page 10, line 38, delete "to each licensed physician" and insert "**in the Indiana Register**".

Page 10, line 39, delete "March" and insert "**February**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1286 as introduced.)

FRY, Chair

Committee Vote: yeas 14, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1286 be amended to read as follows:

Page 5, between lines 20 and 21, begin a new paragraph and insert:

SECTION 7. IC 27-12-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) **Subject to subsection (d)**, the commissioner shall forward the name of every health care provider, except a hospital, against whom a settlement is made or judgment is rendered under this article to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice the health care provider's profession. In each case involving review of a health care provider's fitness to practice forwarded under this section, the appropriate board of professional registration and examination may, in appropriate cases, take the following disciplinary action:

- (1) censure;
- (2) imposition of probation for a determinate period;
- (3) suspension of the health care provider's license for a determinate period; or
- (4) revocation of the license.

(b) Review of the health care provider's fitness to practice shall be conducted in accordance with IC 4-21.5.

(c) The appropriate board of professional registration and examination shall report to the commissioner the board's findings, the action taken, and the final disposition of each case involving review of a health care provider's fitness to practice forwarded under this section.

(d) The commissioner shall forward the name of a health care provider under subsection (a) only if the medical review panel reviewing the health care provider under IC 27-12-10-22 has unanimously determined that the appropriate board of professional registration should examine the health care provider's fitness to practice.

(e) **A medical review panel determination made under subsection (d):**

- (1) must be a separate opinion from the medical review panel opinion under IC 27-12-10-22; and**
- (2) is not admissible as evidence in a civil action."**

Re-number all SECTIONS consecutively.

(Reference is to House Bill 1286 as printed January 23, 1998.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1286 be amended to read as follows:

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

SECTION 1. IC 27-1-13-7 IS AMENDED TO READ AS FOLLOWS: Sec. 7. No policy of insurance against loss or damage resulting from accident to, or death or injury suffered by, an employee or other person or persons and for which the person or persons insured are liable, or, against loss or damage to property resulting from collision with any moving or stationary object and for which loss or damage the person or persons insured is liable, shall be issued or delivered in this state by any domestic or foreign corporation, insurance underwriters, association, or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision that the insolvency or bankruptcy of the person or persons insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of such policy, and stating that in case execution against the insured is returned unsatisfied in an action brought by the injured person or his or her personal representative in case death resulted from the accident because of such insolvency or bankruptcy then an action may be maintained by the injured person, or his or her personal representative, against such domestic or foreign corporation, insurance underwriters, association or other insurer under the terms of the policy for the amount of the judgment in the said action not exceeding the amount of the policy. No such policy shall be issued or delivered in this state by any foreign or domestic corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision that notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. No such policy shall be issued or delivered in this state to the owner of a motor vehicle, by any domestic or foreign corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision insuring such owner against liability for damages for death or injury to person or property resulting from negligence in the operation of such motor vehicle, in the business of such owner or otherwise, by any person legally using or operating the same with the permission, expressed or implied, of such owner. **No policy of insurance shall be issued or delivered in this state by any**

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foreign or domestic corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless it contains a provision that authorizes such foreign or domestic corporation, insurance underwriters, association or other insurer authorized to do business in this state to settle the liability of its insured under IC 27-12 et seq. without the consent of its insured when the unanimous opinion of the medical review panel is not in favor of the insured. This provision applies to all medical malpractice insurance policies issued or renewed after January 1, 1999. If a motor vehicle is owned jointly by a husband and wife, either spouse may, with the written consent of the other spouse, be excluded from coverage under the policy. A husband and wife may choose instead to have their liability covered under separate policies. A policy issued in violation of this section shall, nevertheless, be held valid but be deemed to include the provisions required by this section, and when any provision in such policy or rider is in conflict with the provision required to be contained by this section, the rights, duties and obligations of the insurer, the policyholder and the injured person or persons shall be governed by the provisions of this section.

Renumber all SECTIONS consecutively.

(Reference is to House Bill 1286 as printed January 23, 1998.)

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