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# ENGROSSED HOUSE BILL No. 1205

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DIGEST OF HB 1205 (Updated February 16, 1998 4:27 pm - DI 47)

**Citations Affected:** IC 27-1.

**Synopsis:** Insurance agent as beneficiary of policy. Prohibits an insurance agent from being the beneficiary of, owning, or receiving collateral assignment of an individual 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. Authorizes the insurance commissioner to order an insurance agent to make restitution for certain violations. Provides that a person that recklessly violates the Indiana Insurance Law commits a Class A misdemeanor.

**Effective:** July 1, 1998.

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**Becker, Fry, Budak, Gregg**

(SENATE SPONSORS — SERVER, O'DAY)

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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.

February 3, 1998, engrossed. Read third time, passed. Yeas 96, nays 3.

SENATE ACTION

February 9, 1998, read first time and referred to Committee on Insurance and Interstate Cooperation.

February 17, 1998, amended, reported favorably — Do Pass.

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HEA 1205—Concur+



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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 ENROLLED ACT No. 1205

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AN ACT to amend the Indiana Code concerning insurance.

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

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.

SECTION 2. 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. ~~Such~~ **A** designation at the option of the ~~insured~~ **policyowner** may be made either revocable or irrevocable, and the option elected shall be set out

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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) 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.

(e) Except as provided in subsection (g), 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) 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) 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.

SECTION 3. IC 27-1-15.5-8, AS AMENDED BY P.L.253-1997(ss), SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) The commissioner may suspend, revoke, refuse to continue, renew, or issue any license issued under this chapter, or impose any of the disciplinary sanctions under subsection (f) if, after notice to the licensee and to the insurer represented and a

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hearing, the commissioner finds as to the licensee any one (1) or more of the following conditions:

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

(b) The commissioner shall refuse to:

- (1) issue a license; or



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

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

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

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

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

- (1) Permanently revoke (as defined in subsection ~~(h)~~) (i) a licensee's certificate.
- (2) Revoke a licensee's certificate with a stipulation that the licensee may not reapply for a certificate for a period fixed by the commissioner. The fixed period may not exceed ten (10) years.
- (3) Suspend a licensee's certificate.
- (4) Censure a licensee.
- (5) Issue a letter of reprimand.
- (6) Place a licensee on probation status and require the licensee to:
  - (A) report regularly to the commissioner upon the matters that are the basis of probation;
  - (B) limit practice to those areas prescribed by the commissioner; or



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(C) continue or renew professional education under a licensee approved by the commissioner until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

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

**(g) The commissioner may order the licensee to make restitution if the commissioner finds that the licensee has violated:**

- (1) subsection (a)(5);**
- (2) subsection (a)(8);**
- (3) subsection (a)(9); or**
- (4) section 24 of this chapter.**

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

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

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

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

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

**(c) At no time may an agent:**

- (1) be named a beneficiary of;**
- (2) become an owner of; or**
- (3) receive a collateral assignment of;**

**an individual life insurance policy or individual annuity contract unless the agent has an insurable interest in the life of the insured, or annuitant.**

**(d) A beneficiary designation, ownership designation, or collateral assignment made in violation of this section is void.**

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