

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

## HOUSE ENROLLED ACT No. 1222

---

AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 27-1-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. As used in this article, and unless a different meaning appears from the context: (a) "Insurance" means a contract of insurance or an agreement by which one (1) party, for a consideration, promises to pay money or its equivalent or to do an act valuable to the insured upon the destruction, loss or injury of something in which the other party has a pecuniary interest, or in consideration of a price paid, adequate to the risk, becomes security to the other against loss by certain specified risks; to grant indemnity or security against loss for a consideration.

(b) "Commissioner" means the "insurance commissioner" of this state.

(c) "Department" means "the department of insurance" of this state.

(d) The term "company" or "corporation" means an insurance company and includes all persons, partnerships, corporations, associations, orders or societies engaged in or proposing to engage in making any kind of insurance authorized by the laws of this state.

(e) The term "domestic company" or "domestic corporation" means an insurance company organized under the insurance laws of this state.

(f) The term "foreign company" or "foreign corporation" means an insurance company organized under the laws of any state of the United States other than this state or under the laws of any territory or insular

**HEA 1222 — Concur+**



C  
O  
P  
Y

possession of the United States or the District of Columbia.

(g) The term "alien company" or "alien corporation" means an insurance company organized under the laws of any country other than the United States or territory or insular possession thereof or of the District of Columbia.

(h) The term "person" includes individuals, corporations, associations, and partnerships; personal pronoun includes all genders; the singular includes the plural and the plural includes the singular.

(k) The term "insurance solicitor" means any natural person employed to aid an insurance agent in any manner in soliciting, negotiating or effecting contracts of insurance or indemnity other than life.

(l) The term "principal office" means that office maintained by the corporation in this state, the address of which is required by the provisions of this article to be kept on file in the office of the department.

(m) The term "articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly referred to, and includes articles of merger, consolidation and reinsurance, and in case of corporations, heretofore organized, articles of reorganization filed in the office of the secretary of state, and all amendments thereto.

(n) The term "shareholder" means one who is a holder of record of shares of stock in a corporation, unless the context otherwise requires.

(o) The term "policyholder" means one who is a holder of a contract of insurance in an insurance company.

(p) The term "member" means one who holds a contract of insurance or is insured in an insurance company other than a stock corporation.

(q) The term "capital stock" means the aggregate amount of the par value of all shares of capital stock.

(r) The term "capital" means the aggregate amount paid in on the shares of capital stock of a corporation issued and outstanding.

(s) The term "life insurance company" means any company making one or more of the kinds of insurance set out and defined in class 1(a) of IC 27-1-5-1.

(t) The term "casualty insurance company" means any company making the kind or kinds of insurance set out and defined in class 2 of IC 27-1-5-1.

(u) The term "fire and marine insurance company" means any company making the kind or kinds of insurance set out and defined in class 3 of IC 27-1-5-1.



(v) The term "certificate of authority" means an instrument in writing issued by the department to an insurer, which sets out the authority of such insurer to engage in the business of insurance or activities connected therewith.

(w) The term "premium" means money or any other thing of value paid or given in consideration to an insurer, agent, or solicitor on account of or in connection with a contract of insurance and shall include as a part but not in limitation of the above, policy fees, admission fees, membership fees and regular or special assessments and payments made on account of annuities.

(x) The term "insurer" means a company, firm, partnership, association, order, society or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal or inter-insurers, or individual underwriters.

(y) The terms "assessment plan" and "assessment insurance" mean the mode or plan and the business of a corporation, association or society organized and limited to the making of insurance on the lives of persons and against disability from disease, bodily injury or death by accident, and which provides for the payment of policy claims, accumulation of reserve or emergency funds, and the expenses of the management and prosecution of its business by payments to be made either at stated periods named in the contract or upon assessments, and wherein the insured's liability to contribute is not limited to a fixed sum.

**(z) "Agency billed" refers to a system in which an insured pays a premium directly to an insurance agency.**

SECTION 2. IC 27-1-15.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 3. (a) A person may not act as or hold himself out to be an insurance agent, surplus lines insurance agent, limited insurance representative, or consultant unless he is duly licensed. An insurance agent, surplus lines insurance agent, or limited insurance representative may not make application for, procure, negotiate for, or place for others any policies for any kinds of insurance as to which he is not then qualified and duly licensed. An insurance agent and a limited insurance representative may receive qualification for a license in one (1) or more of the kinds of insurance defined in Class I, Class II, and Class III of IC 27-1-5-1. A surplus lines insurance agent may receive qualification for a license in one (1) or more of the kinds of insurance defined in Class II and Class III of IC 27-1-5-1 from insurers that are authorized to do business in one (1) or more states of the United States of America but which insurers are not authorized to do business in Indiana, whenever, after diligent effort,



as determined to the satisfaction of the insurance department, such licensee is unable to procure the amount of insurance desired from insurers authorized and licensed to transact business in Indiana. The commissioner may issue a limited insurance representative's license to the following without examination:

- (1) a person who is a ticket-selling agent of a common carrier who will act only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by such common carrier;
- (2) a person who will only negotiate or solicit limited travel accident insurance in transportation terminals;
- (3) a person who will only negotiate or solicit insurance covered by IC 27-8-4;
- (4) a person who will only negotiate or solicit insurance under Class II(j); or
- (5) to any person who will negotiate or solicit a kind of insurance that the commissioner finds does not require an examination to demonstrate professional competency.

(b) A corporation or limited liability company may be licensed as an insurance agent, surplus lines insurance agent, or limited insurance representative. Every officer, director, stockholder, or employee of the corporation or limited liability company personally engaged in Indiana in soliciting or negotiating policies of insurance shall be registered with the commissioner as to its license, and each such member, officer, director, stockholder, or employee shall also qualify as an individual licensee. However, this section does not apply to a management association, partnership, or corporation whose operations do not entail the solicitation of insurance from the public.

(c) The commissioner may not grant, renew, continue or permit to continue any license if he finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. "Controlled business" means:

- (1) insurance written on the interests of the licensee or those of his immediate family or of his employer; or
- (2) insurance covering himself or members of his immediate family or a corporation, limited liability company, association, or partnership, or the officers, directors, substantial stockholders, partners, members, managers, employees of such a corporation, limited liability company, association, or partnership, of which he is or a member of his immediate family is an officer, director, substantial stockholder, partner, member, manager, associate, or employee.



However, this section does not apply to insurance written or interests insured in connection with or arising out of credit transactions. Such a license shall be deemed to have been or intended to be used for the purpose of writing controlled business, if the commissioner finds that during any twelve (12) month period the aggregate commissions earned from such controlled business has exceeded twenty-five percent (25%) of the aggregate commission earned on all business written by such applicant or licensee during the same period.

(d) An insurer, insurance agent, surplus lines insurance agent, or limited insurance representative may not pay any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, surplus lines insurance agent, or limited insurance representative within Indiana, unless the person held, at the time the services were performed, a valid license for that kind of insurance as required by the laws of Indiana for such services. A person, other than a person duly licensed by the state of Indiana as an insurance agent, surplus lines insurance agent, or limited insurance representative, may not, at the time such services were performed, accept any such commission, brokerage, or other valuable consideration. However, any such person duly licensed under this chapter may:

(1) pay or assign his commissions or direct that his commissions be paid:

(A) to a partnership of which he is a member, an employee, or an agent; or

(B) to a corporation of which he is an officer, employee, or agent; or

(2) pay, pledge, assign, or grant a security interest in the person's commission to a lending institution as collateral for a loan if the payment, pledge, assignment, or grant of a security interest is not, directly or indirectly, in exchange for insurance services performed.

This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

(e) The license shall state the name and resident address of the licensee, date of issue, the renewal or expiration date, the line or lines of insurance covered by the license, and such other information as the commissioner considers proper for inclusion in the license.

(f) All licenses issued under this chapter, **other than a limited insurance representative's license or an insurance agent's license**, shall continue in force not longer than twenty-four (24) months. **A limited insurance representative's license and an insurance agent's**

C  
O  
P  
Y



**license continue in force for forty-eight (48) months.** The insurance department shall establish procedures for the renewal of licenses. A license may be renewed after it expires as follows:

- (1) A person who applies for a license renewal not more than twenty-four (24) months after the person's license expires must:
  - (A) satisfy the requirements of IC 27-1-15.5-7.1(b); and
  - (B) pass to the department's satisfaction the laws portion of the examination required of an applicant under IC 27-1-15.5-4(g)(5) for the type of license for which the person seeks renewal.
- (2) A person who applies for a license renewal more than twenty-four (24) months after it expires must successfully complete the education requirements of IC 27-1-15.5-4(e) and pass to the department's satisfaction the examination required of an applicant for the type of license for which the person seeks renewal.

All license renewals must be accompanied by payment of the renewal fee as provided in section 4(d) of this chapter.

(g) A license as an insurance agent, surplus lines insurance agent, or limited insurance representative may not be required of the following:

- (1) Any regular salaried officer or employee of an insurance company, or of a licensed insurance agent, surplus lines insurance agent, or limited insurance representative if such officer or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
- (2) Persons who secure and furnish information for the purpose of group or wholesale life insurance, or annuities, or group, blanket, or franchise health insurance, or for enrolling individuals under such plans or issuing certificates thereunder or otherwise assisting in administering such plans, where no commission is paid for such service.
- (3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company, provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.

(h) An insurer shall require that a person who, on behalf of the

C  
O  
P  
Y



insurer, makes any oral, written, or electronic communication with an individual regarding insurance coverage, rates, benefits, or policy terms, for the purpose of soliciting insurance shall be licensed under this chapter.

(i) A violation of subsection (h) is deemed an unfair method of competition and an unfair and deceptive act and practice in the business of insurance subject to the provisions of IC 27-4-1-4.

SECTION 3. IC 27-1-15.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7. Consultants. (a) No individual or corporation shall engage in the business of an insurance consultant until a license therefor has been issued to ~~him or it~~ **the individual or corporation** by the commissioner. However, no consultant license is required for the following:

- (1) Attorneys licensed to practice law in Indiana acting in their professional capacity.
- (2) A duly licensed insurance agent, or surplus lines insurance agent.
- (3) A trust officer of a bank acting in the normal course of his employment.
- (4) An actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity.

(b) An application for a license to act as an insurance consultant shall be made to the commissioner on forms prescribed by the commissioner. An applicant may limit the scope of his consulting services by so stating on his application. Areas of allowable consulting services shall be:

- (1) Class I, consulting regarding the kinds of insurance specified in IC 27-1-5-1 as Class I; and
- (2) Class II and Class III, consulting regarding the kinds of insurance specified in IC 27-1-5-1 as Class II and Class III.

Within a reasonable time after receipt of a properly completed application form, the commissioner shall hold a written examination for the applicant limited to the type of consulting services designated by the applicant, and may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations and any other matter which he deems necessary or advisable to determine compliance with this chapter or for the protection of the public.

(c) Consultants shall provide their services as outlined in a written agreement. ~~the form of which shall be approved by the commissioner.~~ The agreement shall be signed by and a copy provided to the person

C  
o  
p  
y



receiving services before any services are performed. The agreement must outline the nature of the work to be performed by the consultant, the method of compensation of the consultant and shall be retained by the consultant for not less than two (2) years after completion of the services. A copy of the agreement shall be available to the commissioner. In the absence of an agreement on the consultant's fee, the consultant shall not be entitled to recover a fee in any action at law or in equity. **For purposes of this subsection, "consultant's fee" does not include a late fee charged under section 25(e) of this chapter or fees otherwise allowed by law.**

(d) No individual or corporation may concurrently hold a consultant's license and an insurance agent's, surplus lines insurance agent's, or limited insurance representative's license at any time.

(e) No licensed consultant may employ, be employed by, or be in partnership with, nor receive any remuneration whatsoever, from any licensed insurance agent, surplus lines insurance agent, or limited insurance representative, or insurer, except that a consultant may be compensated by an insurer for providing consulting services to the insurer.

(f) Such license shall be valid for not longer than twenty-four (24) months and may be renewed and extended in the same manner as an insurance agent's license. The commissioner shall designate on the license those consulting services which the licensee is entitled to perform.

(g) All requirements and standards relating to the denial, revocation or suspension of an insurance agent's license, including penalties, shall apply to the denial, revocation and suspension of an insurance consultant's license as nearly as practicable.

(h) A consultant is obligated under his license to serve with objectivity and complete loyalty solely the insurance interests of his client and to render his client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests.

**(i) Except as provided in subsection (j), the form of a written agreement under subsection (c) must be filed with the commissioner not less than thirty (30) days before the form is used. If the commissioner does not approve the form within thirty (30) days after filing, the form is considered approved. At any time after notice and for cause shown, the commissioner may withdraw approval of a form effective thirty (30) days after the commissioner issues notice that the approval is withdrawn.**

(j) Subsection (i) does not apply to the form of a written

C  
O  
P  
Y



**agreement under subsection (c) that is executed by an insurance agent and an exempt commercial policyholder (as defined in IC 27-1-22-2.5).**

SECTION 4. IC 27-1-15.5-7.1, AS AMENDED BY P.L.268-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 7.1. (a) This section does not apply to:

- (1) a nonresident licensee that:
  - (A) is licensed as a resident insurance agent by another state that has a continuing education requirement as a condition for license renewals; and
  - (B) meets all the requirements for licensure in the resident state of the nonresident licensee; ~~or~~
- (2) a person who is issued a limited insurance representative's license without examination under section 3(a)(1) or 3(a)(2) of this chapter; **or**
- (3) a limited insurance representative who only negotiates or solicits credit life insurance or credit disability insurance.**

(b) To renew a license issued under this chapter:

- (1) an insurance agent (as defined in section 2(b) of this chapter) must complete at least ~~thirty (30)~~ **forty (40)** hours of credit in continuing education courses; and
- (2) a limited insurance representative (as defined in section 2(e) of this chapter) must complete at least ten (10) hours of credit in continuing education.

An attorney in good standing who is admitted to the practice of law in Indiana and holds a license issued under this chapter may complete all or any number of hours of continuing education required by this subsection by completing an equivalent number of hours in continuing legal education courses that are related to the business of insurance.

(c) To satisfy the requirements of subsection (b), a licensee may use only those credit hours earned in continuing education courses completed by the licensee:

- (1) after the date on which the licensee last renewed a license under this chapter; **or**
- (2) if the licensee is renewing a license for the first time, after the date on which the licensee was issued the license under this chapter.

(d) If an insurance agent (as defined in section 2(b) of this chapter) holds more than one (1) license under this chapter, the licensee may not be required to complete a total of more than ~~thirty (30)~~ **forty (40)** hours of credit in continuing education courses to renew all of the licenses.

(e) A licensee may receive credit only for completing continuing

C  
O  
P  
Y



education courses that have been approved by the commissioner under section 7.3 of this chapter.

(f) A licensee who teaches a course approved by the commissioner under section 7.3 of this chapter may receive continuing education credit for teaching the course.

(g) When a licensee renews a license issued under this chapter, the licensee must submit:

(1) a continuing education statement that:

(A) is on a form provided by the commissioner;

(B) is signed by the licensee under oath; and

(C) lists the continuing education courses completed by the licensee to satisfy the continuing education requirements under this section; and

(2) any other information required by the commissioner.

(h) A continuing education statement submitted under subsection (g) may be reviewed and audited by the department of insurance.

(i) A licensee shall retain a copy of the original certificate of completion received by the licensee for completion of a continuing education course.

(j) The commissioner may adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 27-1-15.5-7.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 7.7. (a) The commissioner shall adopt rules under IC 4-22-2 to establish a ~~biennial~~ license **renewal** fee from each licensee required to meet the requirements of section 7.1 of this chapter.

(b) The commissioner shall adopt rules under IC 4-22-2 to establish appropriate fees from licensees and providers of continuing education courses for the administration of the information required under sections 4 and 7.1 of this chapter. The fees collected under this subsection must produce sufficient revenue to pay the expenses incurred by the department of insurance in implementing this chapter and shall be deposited in the department of insurance fund established by IC 27-1-3-28.

SECTION 6. IC 27-1-15.5-25 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 25. (a) This section applies to commercial property and casualty insurance coverage described in Class 2 and Class 3 of IC 27-1-5-1.**

**(b) A licensed insurance agent may charge a commercial insured a reasonable fee to reimburse the insurance agent for expenses incurred by the insurance agent at the specific request of**

C  
O  
P  
Y



the commercial insured, subject to the following requirements:

(1) Before incurring any expense described in this subsection, the insurance agent shall provide written notice to the commercial insured stating that a fee will be charged and setting forth the:

- (A) amount of the fee; or
- (B) basis for calculating the fee.

(2) The amount of a fee and the basis for calculating a fee may not vary among commercial insureds.

(3) Any fee that is charged must be identified separately from premium and itemized in any bill provided to the commercial insured.

(c) A licensed insurance agent may charge a commercial insured a reasonable fee for services that are provided at the request of the commercial insured in connection with a policy for coverage described in subsection (a) and for which the insurance agent does not receive a commission or other compensation, subject to the following requirements:

(1) Before providing services, the insurance agent shall provide to the commercial insured a written description of the services to be provided and the fee for the services.

(2) Any fee that is charged must be identified separately from premium and itemized in any bill provided to the commercial insured.

(d) A licensed insurance agent who acts as a consultant and provides services described in this section shall comply with the requirements of this section and section 3.1 of this chapter.

(e) A licensed insurance agent may charge a late fee for agency billed accounts or policies that are more than thirty (30) days delinquent. A late fee may not exceed one and three quarters percent (1.75%) per month of the amount due on the due date.

SECTION 7. [EFFECTIVE JANUARY 1, 2001] (a) IC 27-1-15.5-3, IC 27-1-15.5-7.1, and IC 27-1-15.5-7.7, all as amended by this act, apply to a license that is renewed or issued after December 31, 2000.

(b) An individual or entity who:

- (1) is licensed under IC 27-1-15.5; and
- (2) voluntarily surrenders the license before January 1, 2003;

may not renew the license or obtain a new license before the expiration date of the license that the individual or entity surrendered.

(c) Until the commissioner adopts rules to establish a license

C  
O  
P  
Y



**renewal fee under IC 27-1-15.5-7.7, as amended by this act, the license renewal fee for a license renewed or issued after December 31, 2000, is two (2) times the fee that was charged for the license on December 31, 2000, if the license renewal period for the license was two (2) years.**

**(d) This SECTION expires December 31, 2003.**

C  
o  
p  
y



---

Speaker of the House of Representatives

---

President of the Senate

---

President Pro Tempore

Approved: \_\_\_\_\_

---

Governor of the State of Indiana

C  
o  
p  
y

HEA 1222 — Concur+

