

SENATE BILL No. 53

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-23; IC 34-46-2-25.3.

Synopsis: Internal insurance compliance audits. Provides that certain information related to voluntary, internal insurance compliance audits is privileged information.

Effective: July 1, 2012.

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January 4, 2012, read first time and referred to Committee on Insurance and Financial Institutions.

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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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 53



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 27-2-23 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2012]:
 4 **Chapter 23. Privilege Applying to Internal Insurance**
 5 **Compliance Audits**
 6 **Sec. 1. As used in this chapter, "department" refers to the**
 7 **department of insurance created by IC 27-1-1-1.**
 8 **Sec. 2. As used in this chapter, "insurance compliance audit"**
 9 **means a voluntary, internal evaluation, review, assessment, audit,**
 10 **or investigation to:**
 11 **(1) identify noncompliance;**
 12 **(2) prevent noncompliance; or**
 13 **(3) promote compliance;**
 14 **with laws, regulations, orders, or industry or professional**
 15 **standards, conducted by or on behalf of an insurer or activity**
 16 **licensed or regulated under this title.**
 17 **Sec. 3. (a) As used in this chapter, "insurance compliance audit**



1 document" means a document and related materials prepared in
2 connection with an insurance compliance audit.

3 (b) The term does not include original, underlying corporate
4 records and documents described in section 17 of this chapter.

5 (c) The term includes any of the following:

6 (1) An insurance compliance audit report that:

7 (A) is prepared by an employee or independent contractor
8 of the insurer; and

9 (B) may include a description of the scope of the audit, the
10 information gained in the audit, and conclusions and
11 recommendations, with exhibits and appendices.

12 (2) Memoranda and documents analyzing parts or all of an
13 insurance compliance audit report and discussing potential
14 implementation issues.

15 (3) An implementation plan that addresses:

16 (A) correction of previous noncompliance;

17 (B) improvement of current compliance; and

18 (C) prevention of future noncompliance.

19 (4) Supporting documents, notes, records, analytic data, or
20 other evidentiary materials generated in the course of
21 conducting the insurance compliance audit.

22 Sec. 4. As used in this chapter, "insurer" has the meaning set
23 forth in IC 27-1-2-3.

24 Sec. 5. As used in this chapter, "reasonable corrective action"
25 may include:

26 (1) reimbursement of premium payments, surcharges, or
27 other charges made;

28 (2) compensation for losses sustained;

29 (3) reinstatement of policies canceled; or

30 (4) another appropriate remedy;

31 with respect to persons adversely affected by an insurer's
32 noncompliance with a law, a regulation, an order, or an industry
33 or professional standard revealed by an insurance compliance
34 audit.

35 Sec. 6. Except as provided in this chapter, an insurance
36 compliance audit document is privileged information and is not
37 discoverable or admissible as evidence in a civil or administrative
38 proceeding.

39 Sec. 7. (a) Except as provided in this chapter, an individual
40 involved in preparation of an insurance compliance audit or
41 insurance compliance audit document is not subject to examination
42 concerning the insurance compliance audit or insurance

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1 compliance audit document in a civil or administrative proceeding.
 2 However, if any part of an insurance compliance audit or
 3 insurance compliance audit document is not privileged, the
 4 individual may be examined concerning the part of the insurance
 5 compliance audit or insurance compliance audit document that is
 6 not privileged.

7 (b) An individual involved in the preparation of an insurance
 8 compliance audit or insurance compliance audit document who
 9 becomes aware of an alleged criminal violation in the course of the
 10 preparation shall report the alleged violation to the insurer.

11 (c) Not later than thirty (30) days after receiving a report under
 12 subsection (b), the insurer shall provide the information to the
 13 insurance commissioner.

14 (d) An individual who knowingly fails to make a report under
 15 subsection (b) commits a Class A misdemeanor.

16 **Sec. 8. (a) The insurance commissioner:**

17 (1) shall not make available to any person an insurance
 18 compliance audit document that was provided to the
 19 commissioner:

20 (A) voluntarily; or

21 (B) at the request of the commissioner under a claim of
 22 authority to compel disclosure under section 13 of this
 23 chapter; and

24 (2) shall treat an insurance compliance audit document as
 25 confidential information for purposes of IC 27-1-3-10.5
 26 without waiving the privileges established by sections 6 and 7
 27 of this chapter.

28 (b) An insurance compliance audit document provided as
 29 described in subsection (a)(1) may not be used for any purpose
 30 other than to determine:

31 (1) whether:

32 (A) disclosed defects in an insurer's policies and
 33 procedures; or

34 (B) inappropriate treatment of customers;
 35 has been remedied; or

36 (2) whether an appropriate plan for remedy of a defect or
 37 inappropriate treatment specified in subdivision (1) is in
 38 place.

39 **Sec. 9. (a) An insurance compliance audit document that is**
 40 **provided to the insurance commissioner is subject to applicable**
 41 **statutory or common law privilege, including:**

42 (1) the work product doctrine;

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1 (2) attorney-client privilege; and
 2 (3) the subsequent remedial measures exclusion.
 3 (b) An insurance compliance audit document provided to the
 4 commissioner is the property of the insurer and is confidential.
 5 Sec. 10. An insurer that discloses an internal compliance audit
 6 document to a governmental entity:
 7 (1) voluntarily; or
 8 (2) as required by law;
 9 does not waive a privilege established by section 6 or 7 of this
 10 chapter with respect to any other person or governmental entity.
 11 Sec. 11. A privilege established by section 6 or 7 of this chapter
 12 does not apply to the extent that the privilege is expressly waived
 13 by the insurer that prepared or caused to be prepared an insurance
 14 compliance audit document.
 15 Sec. 12. A privilege established by section 6 or 7 of this chapter
 16 does not apply to material that a court, after an in camera review
 17 of the material, requires to be disclosed in a civil or administrative
 18 proceeding after determining at least one (1) of the following:
 19 (1) The privilege is asserted for a fraudulent purpose.
 20 (2) The material is not subject to the privilege as described in
 21 section 17 of this chapter.
 22 (3) The insurer has failed to undertake reasonable corrective
 23 action or eliminate noncompliance with applicable laws within
 24 a reasonable period.
 25 Sec. 13. (a) Not later than thirty (30) days after the insurance
 26 commissioner, the attorney general, or a pleading party in a civil
 27 action makes a written request by certified mail for disclosure of
 28 an insurance compliance audit document, the insurer that
 29 prepared the insurance compliance audit document or caused the
 30 insurance compliance audit document to be prepared may file a
 31 petition in a court with jurisdiction in the same venue chosen by
 32 the original pleading party requesting an in camera hearing to
 33 determine whether the insurance compliance audit document or
 34 parts of the insurance compliance audit document are subject to
 35 disclosure.
 36 (b) Failure by an insurer to file a petition under subsection (a)
 37 waives the privilege established under this chapter for the
 38 insurance compliance audit document that is the subject of a
 39 request for disclosure under subsection (a).
 40 (c) An insurer asserting a privilege established by section 6 or
 41 7 of this chapter in response to a request for disclosure of an
 42 insurance compliance audit document under subsection (a) must

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1 include in the insurer's petition for an in camera hearing, with
 2 respect to the insurance compliance audit document, all the
 3 information listed in section 14 of this chapter.

4 (d) Not later than thirty (30) days after an insurer files a
 5 petition under subsection (a), the court shall issue an order
 6 scheduling an in camera hearing to determine whether any part of
 7 the insurance compliance audit document is privileged or subject
 8 to disclosure.

9 Sec. 14. An insurer asserting a privilege established by section
 10 6 or 7 of this chapter in response to a request for disclosure under
 11 section 13 of this chapter shall provide to the insurance
 12 commissioner, the attorney general, or a pleading party in a civil
 13 matter, at the time the insurer files an objection to the disclosure,
 14 the following information:

- 15 (1) The date of the insurance compliance audit document.
- 16 (2) The identity of the person who conducted the insurance
 17 compliance audit.
- 18 (3) The general nature of the activities covered by the
 19 insurance compliance audit.
- 20 (4) An identification of the parts of the insurance compliance
 21 audit document for which the privilege is asserted.

22 Sec. 15. (a) An insurer that asserts a privilege established by
 23 section 6 or 7 of this chapter has the burden of demonstrating the
 24 applicability of the privilege.

25 (b) After an insurer has established the applicability of a
 26 privilege under subsection (a), the pleading party in a civil action,
 27 including the insurance commissioner or attorney general, that
 28 seeks disclosure of material for a cause described in section 12 of
 29 this chapter has the burden of proving that the:

- 30 (1) privilege is asserted for a fraudulent purpose;
- 31 (2) material is not subject to the privilege as described in
 32 section 17 of this chapter; or
- 33 (3) insurer failed to undertake reasonable corrective action or
 34 failed to eliminate noncompliance within a reasonable period.

35 (c) If the court finds that the privilege is asserted for a
 36 fraudulent purpose, the court shall award reasonable attorney's
 37 fees to be paid by the insurer to the pleading party.

38 Sec. 16. (a) The parties described in section 13 of this chapter
 39 may at any time stipulate in legal proceedings before a court under
 40 this chapter to entry of an order directing whether specific
 41 information contained in an insurance compliance audit document
 42 is subject to a privilege established by section 6 or 7 of this chapter.

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1 (b) A stipulation described in subsection (a) may be limited to
 2 the instant proceeding and, absent specific language to the
 3 contrary, is not applicable in any other proceeding.

4 Sec. 17. A privilege established by section 6 or 7 of this chapter
 5 does not extend to the following original, underlying corporate
 6 records and documents:

7 (1) Documents, communications, data, reports, or other
 8 information expressly required to be collected, developed,
 9 maintained, or reported to a regulatory entity under this title,
 10 another state law, or federal law.

11 (2) Information obtained through observation or monitoring
 12 by a regulatory entity.

13 (3) Information obtained from a source independent of an
 14 insurance compliance audit.

15 (4) Documents, communications, data, reports, memoranda,
 16 drawings, photographs, exhibits, computer records, maps,
 17 charts, graphs, surveys, and other materials prepared or
 18 maintained in the ordinary course of insurance business and
 19 not in relation to an insurance compliance audit.

20 Sec. 18. (a) If a privilege established by section 6 or 7 of this
 21 chapter does not apply to an insurance compliance audit document
 22 as described in section 11 or 12 of this chapter, a court may compel
 23 the disclosure of only the parts of the insurance compliance audit
 24 document that are relevant to issues in dispute in the underlying
 25 proceeding.

26 (b) Information required to be disclosed under subsection (a) is
 27 confidential and not public information, and a privilege established
 28 by section 6 or 7 of this chapter that otherwise applies to the
 29 information is not waived for purposes of another civil or
 30 administrative proceeding.

31 Sec. 19. (a) This chapter does not limit, waive, or abrogate the
 32 scope or nature of a statutory or common law privilege other than
 33 a privilege established by this chapter.

34 (b) Except as provided in section 13 of this chapter, this chapter
 35 does not limit the department's authority to compel the disclosure
 36 of documents necessary to further the department's general
 37 regulatory purpose.

38 SECTION 2. IC 34-46-2-25.3 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2012]: Sec. 25.3. IC 27-2-23 (Concerning
 41 certain information related to internal insurance compliance
 42 audits).

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