

# SENATE BILL No. 245

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-4-1-4.5; IC 34-51-1-4.

**Synopsis:** Unfair claim settlement practices. Allows a person to file a civil action for damages related to an unfair claims settlement practice. Specifies the manner in which payment of certain damages must be made.

**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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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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**SENATE BILL No. 245**



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 27-4-1-4.5 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4.5. (a) The following
- 3 are unfair claim settlement practices:
- 4 (1) Misrepresenting pertinent facts or insurance policy provisions
- 5 relating to coverages at issue.
- 6 (2) Failing to acknowledge and act reasonably promptly upon
- 7 communications with respect to claims arising under insurance
- 8 policies.
- 9 (3) Failing to adopt and implement reasonable standards for the
- 10 prompt investigation of claims arising under insurance policies.
- 11 (4) Refusing to pay claims without conducting a reasonable
- 12 investigation based upon all available information.
- 13 (5) Failing to affirm or deny coverage of claims within a
- 14 reasonable time after proof of loss statements have been
- 15 completed.
- 16 (6) Not attempting in good faith to effectuate prompt, fair, and
- 17 equitable settlements of claims in which liability has become



- 1 reasonably clear.
- 2 (7) Compelling insureds to institute litigation to recover amounts
- 3 due under an insurance policy by offering substantially less than
- 4 the amounts ultimately recovered in actions brought by such
- 5 insureds.
- 6 (8) Attempting to settle a claim for less than the amount to which
- 7 a reasonable individual would have believed the individual was
- 8 entitled by reference to written or printed advertising material
- 9 accompanying or made part of an application.
- 10 (9) Attempting to settle claims on the basis of an application that
- 11 was altered without notice to or knowledge or consent of the
- 12 insured.
- 13 (10) Making claims payments to insureds or beneficiaries not
- 14 accompanied by a statement setting forth the coverage under
- 15 which the payments are being made.
- 16 (11) Making known to insureds or claimants a policy of appealing
- 17 from arbitration awards in favor of insureds or claimants for the
- 18 purpose of compelling them to accept settlements or compromises
- 19 less than the amount awarded in arbitration.
- 20 (12) Delaying the investigation or payment of claims by requiring
- 21 an insured, a claimant, or the physician of either to submit a
- 22 preliminary claim report and then requiring the subsequent
- 23 submission of formal proof of loss forms, both of which
- 24 submissions contain substantially the same information.
- 25 (13) Failing to promptly settle claims, where liability has become
- 26 reasonably clear, under one (1) portion of the insurance policy
- 27 coverage in order to influence settlements under other portions of
- 28 the insurance policy coverage.
- 29 (14) Failing to promptly provide a reasonable explanation of the
- 30 basis in the insurance policy in relation to the facts or applicable
- 31 law for denial of a claim or for the offer of a compromise
- 32 settlement.
- 33 (15) In negotiations concerning liability insurance claims,
- 34 ascribing a percentage of fault to a person seeking to recover from
- 35 an insured party, in spite of an obvious absence of fault on the
- 36 part of that person.
- 37 (16) The unfair claims settlement practices defined in
- 38 IC 27-4-1.5.
- 39 **(b) Notwithstanding section 18 of this chapter, a person that**
- 40 **suffers a pecuniary loss as a result of the commission of a practice**
- 41 **specified in subsection (a) may bring a civil action for all of the**
- 42 **following against the person that caused the loss:**

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(1) An amount not to exceed three (3) times the actual damages of the person that suffered the loss.

(2) Costs related to the civil action.

(3) Reasonable attorney's fees.

(c) If a plaintiff in a civil action under subsection (b) obtains a judgment for an amount described in subsection (b)(1) that exceeds the amount of the plaintiff's actual damages, the defendant against which the judgment is entered shall pay the amount that exceeds the plaintiff's actual damages, costs, and reasonable attorney's fees to the clerk of the court where the action is pending.

(d) Upon receiving a payment described in subsection (c), the clerk of the court shall do all of the following:

(1) Pay to the plaintiff seventy-five percent (75%) of the payment received under subsection (c).

(2) Pay the remaining twenty-five percent (25%) of the payment received under subsection (c) to the treasurer of state, who shall deposit the funds in the department of insurance fund established by IC 27-1-3-28 for use by the department in consumer protection.

SECTION 2. IC 34-51-1-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 4. Triple damages in civil actions for unfair claim settlement practices are governed by IC 27-4-1-4.5.**

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