

# HOUSE BILL No. 1037

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## 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 9, 2012, read first time and referred to Committee on Insurance.

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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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## HOUSE BILL No. 1037



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

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

18 (A) voluntarily; or

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

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

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

29 (1) whether:

30 (A) disclosed defects in an insurer's policies and  
 31 procedures have been remedied; or

32 (B) inappropriate treatment of customers has been  
 33 remedied; or

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

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

40 (1) the work product doctrine;

41 (2) attorney-client privilege; and

42 (3) the subsequent remedial measures exclusion.

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1 (b) An insurance compliance audit document provided to the  
2 commissioner is the property of the insurer and is confidential.

3 Sec. 10. An insurer that discloses an internal compliance audit  
4 document to a governmental entity:

- 5 (1) voluntarily; or
- 6 (2) as required by law;

7 does not waive a privilege established by section 6 or 7 of this  
8 chapter with respect to any other person or governmental entity.

9 Sec. 11. A privilege established by section 6 or 7 of this chapter  
10 does not apply to the extent that the privilege is expressly waived  
11 by the insurer that prepared or caused to be prepared an insurance  
12 compliance audit document.

13 Sec. 12. A privilege established by section 6 or 7 of this chapter  
14 does not apply to material that a court, after an in camera review  
15 of the material, requires to be disclosed in a civil or administrative  
16 proceeding after determining at least one (1) of the following:

- 17 (1) The privilege is asserted for a fraudulent purpose.
- 18 (2) The material is not subject to the privilege as described in  
19 section 17 of this chapter.
- 20 (3) The insurer has failed to undertake reasonable corrective  
21 action or eliminate noncompliance with applicable laws within  
22 a reasonable period.

23 Sec. 13. (a) Not later than thirty (30) days after the insurance  
24 commissioner, the attorney general, or a pleading party in a civil  
25 action makes a written request by certified mail for disclosure of  
26 an insurance compliance audit document, the insurer that  
27 prepared the insurance compliance audit document or caused the  
28 insurance compliance audit document to be prepared may file a  
29 petition in a court with jurisdiction in the same venue chosen by  
30 the original pleading party requesting an in camera hearing to  
31 determine whether the insurance compliance audit document or  
32 parts of the insurance compliance audit document are subject to  
33 disclosure.

34 (b) Failure by an insurer to file a petition under subsection (a)  
35 waives the privilege established under this chapter for the  
36 insurance compliance audit document that is the subject of a  
37 request for disclosure under subsection (a).

38 (c) An insurer asserting a privilege established by section 6 or  
39 7 of this chapter in response to a request for disclosure of an  
40 insurance compliance audit document under subsection (a) must  
41 include in the insurer's petition for an in camera hearing, with  
42 respect to the insurance compliance audit document, all the

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1 information listed in section 14 of this chapter.

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

7 Sec. 14. An insurer asserting a privilege established by section  
8 6 or 7 of this chapter in response to a request for disclosure under  
9 section 13 of this chapter shall provide to the insurance  
10 commissioner, the attorney general, or a pleading party in a civil  
11 matter, at the time the insurer files an objection to the disclosure,  
12 the following information:

13 (1) The date of the insurance compliance audit document.

14 (2) The identity of the person who conducted the insurance  
15 compliance audit.

16 (3) The general nature of the activities covered by the  
17 insurance compliance audit.

18 (4) An identification of the parts of the insurance compliance  
19 audit document for which the privilege is asserted.

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

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

28 (1) privilege is asserted for a fraudulent purpose;

29 (2) material is not subject to the privilege as described in  
30 section 17 of this chapter; or

31 (3) insurer failed to undertake reasonable corrective action or  
32 failed to eliminate noncompliance within a reasonable period.

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

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

41 (b) A stipulation described in subsection (a) may be limited to  
42 the instant proceeding and, absent specific language to the

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1 contrary, is not applicable in any other proceeding.

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

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

9 (2) Information obtained through observation or monitoring  
 10 by a regulatory entity.

11 (3) Information obtained from a source independent of an  
 12 insurance compliance audit.

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

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

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

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

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

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

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