

Bulletin 71

HOUSE BILL 1024

June 7, 1991

The Department of Insurance has received numerous inquiries regarding House Bill 1024 (which has been codified at Ind. Code s 27-4-1.5-1, et seq.) The Act establishes procedures which insurers must follow in Indiana prior to authorizing or directing a body shop to repair a motor vehicle. Failure to comply with these procedures constitutes a violation of the Unfair Claims Settlement Act.

In the interest of avoiding the delays inherent in the claims adjusting process and in an effort to work with Indiana consumers and insurers, the Department of Insurance offers the following interpretation of H.B. 1024:

1. Applicability:

A. Insurers:

H.B. 1024 defines "insurer" as having the meaning set forth in Ind. Code s 27-1-2-3, which includes "a company. . . making any kind or kinds of insurance and shall include associations operating as Lloyds reciprocal or inter-insurers, or individual underwriters."

Therefore, H.B. 1024 shall apply to all insurers in Indiana including, without limitation, commercial and personal lines of insurance.

The procedures mandated by H.B. 1024 apply to all insurers irrespective of an insurer's policy regarding body shop selection.

B. Insured:

H.B. 1024 defines "insured" as "a person who is entitled to the coverage provided by an insurance policy." This definition encompasses only named insureds under an insurance policy. Third parties are not insureds for purposes of H.B. 1024.

Under H.B. 1024, only persons entitled to coverage under an insurance policy are defined as "insureds." As a matter of law, coverage is only provided to named insureds under an insurance policy. Third parties generally are not entitled to any contractual rights arising out of another insured's insurance policy. In analogous circumstances, Indiana courts have held, for example, that third parties' actions for coverage under another party's insurance policy and bad faith claims against another party's insurance carrier are without merit. See generally, Eichler v. Scott Pools, Inc. (1987), Ind. App., 513 N.E.2d 665; Martin v. Levinson (1980), Ind. App., 409 N.E.2d 1239; Winchell v. Aetna Life & Casualty Insurance Company (1979), 182 Ind. App. 261, 394 N.E.2d 1114; and, Bennett v. Slater (1972), 154 Ind. App. 67, 289 N.E.2d 144.

Further, it is apparent that the legislature's intention was to provide protection and benefits to premium paying insurance consumers. The entire bill focuses on the relationship between the insurer and the consumer; it does not extend the measure of protection to include third parties.

C. Policies:

H.B. 1024 only applies to policies which are first written or renewed after June 30, 1991.

D. Vehicles:

This new legislation applies to the repair of vehicles in the year of manufacture and the five (5) succeeding years, for a total of six (6) years. In that there are no provisions in this legislation which allow an insurer to be given a credit for the depreciation value of body parts which are to be replaced, an insurer may not take a credit therefor.

2. Statutory Requirements:

A. Sections 8(b) and (c), Ind. Code s 27-4-1.5-8(b) and (c):

Insurers should not proceed with the requirements set forth in Sections 8(b) and (c) prior to the time of claims adjustment because the nature of motor vehicle repair is situation-sensitive. There will be situations where new parts may not be in the consumer's best interest and, therefore, the consumer should not be locked into a choice of parts prior to that determination.

B. Use of Forms:

The Department recommends the use of the forms attached hereto (or forms which are substantially equivalent) in order to assure compliance with the requirements of H.B. 1024. Form 1 provides the requisite written notice to insureds. Form 2 should be enclosed with the written notice and an envelope addressed to the insurer, proper postage pre-paid.

C. Time:

Section 8(b) of H.B. 1024 (Ind. Code s 27-4-1.5-8(b)) requires insurers to provide insureds with written notice of the opportunity to choose the type of body parts to be used in the repair of the insured's vehicle. Insurers should provide such written notice to the insured not later than ten (10) days after receipt of a claim from an insured. H.B. 1024 also requires insurers to give insureds a reasonable opportunity to approve the type of body parts to be used. A reasonable opportunity shall mean not less than twenty (20) days from the date of mail or delivery of the written notice and selection forms. Insurers are prohibited from directing or authorizing repairs to be made in the absence of the insured's approval or waiver within and including the twenty (20) days from the date of mailing of the written notice and selection form.

3. Enforcement:

Violations of the provisions of this legislation will be adjudicated pursuant to the procedures set forth in Ind. Code s 27-4-1-5, Ind. Code s 27-4-1-5.5, Ind. Code s 27-4-1-6, or in such other statutory provisions as may be applicable.

John J. Dillon III
Insurance Commissioner

FORM 1

June 7, 1991

ABC Insured
123 Main Street
Indianapolis, Indiana 12345

Dear Insured:

In accordance with Ind. Code s 27-4-1.5-1, et seq. you are entitled, as an insured under policy no. _____, to approve the type of body parts to be used in the repair of the motor vehicles which are covered under the referenced policy. This letter constitutes written notice that you may select from the following types of body parts:

- A. New body parts manufactured by or for the manufacturer of the motor vehicle;
- B. New body parts that were not manufactured by or for the manufacturer of the motor vehicle; and
- C. Used body parts.

To make your selection, select one of the types of body parts listed on the attached form and return it in the enclosed self-addressed, stamped envelope to:

Appropriate Representative
ABC Insurance Company
123 Insurance Drive
Indianapolis, Indiana 12345

This notice must be received by our office within 20 days of the date of this letter, or no later than 5:00 p.m. on _____. If we do not receive your selection in writing on or before the twentieth day or _____, we may select the type of body part to be used in the repair of your vehicle. In addition to returning the enclosed form, you may also contact the agent or representative listed above to make or confirm your selection. In any event, in order for your approval to be effective, your selection must be made and received within 20 days of the date of this letter, or no later than _____.

If you have any questions regarding this procedure, please contact the listed agent or representative.

Sincerely,

Company Representative

FORM 2

BODY PARTS APPROVAL/SELECTION

As an insured under policy number _____, I have received notice from the insurer listed below of my right to approve, from the list below, the type of body parts to be used in the repair of the motor vehicle(s) covered under the referenced policy. I hereby select and approve the following type of auto parts to be used in the repair of the motor vehicles covered under the reference policy:

- New body parts manufactured by or for the manufacturer of the motor vehicle.
- New body parts that were not manufactured by or for the manufacturer of the motor vehicle.
- Used body parts.

This selection and approval applies only to coverage under the referenced policy.

Date

Insured's Signature

Return to:

Insurance Agent or Representative
Insurance Company
123 Insurance Drive
Indianapolis, Indiana 12345