

# HOUSE BILL No. 1034

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-1-13-18; IC 32-17-14; IC 32-21-4-1; IC 32-38-3-1.

**Synopsis:** Insurance and transfer on death deeds. Extends insurance coverage on property transferred by a transfer on death transfer by 120 days following the death of the insured: (1) after January 1, 2025, for casualty and liability insurance other than title insurance and certain insurance relating to bonds and mortgages; and (2) before, on, or after January 1, 2025, for title insurance and certain insurance relating to bonds and mortgages. Allows certain warning language to be included in a transfer on death deed executed after January 1, 2025. Makes conforming changes.

**Effective:** July 1, 2024.

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January 8, 2024, read first time and referred to Committee on Insurance.

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Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

# HOUSE BILL No. 1034

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

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

1 SECTION 1. IC 27-1-13-18 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2024]: **Sec. 18. (a) This section applies to a loss or damages**  
4 **incurred:**  
5 (1) **after January 1, 2025, for a policy of insurance:**  
6 (A) **that is described in Class 3 of IC 27-1-5-1; or**  
7 (B) **that is described in Class 2 of IC 27-1-5-1, except for a**  
8 **policy of insurance that is described in Class 2(j) of**  
9 **IC 27-1-5-1; and**  
10 (2) **before, on, or after January 1, 2025, for a policy of**  
11 **insurance that is described in Class 2(j) of IC 27-1-5-1.**  
12 (b) **This section applies regardless of whether the policy of**  
13 **insurance was created before, on, or after January 1, 2025, unless**  
14 **the application of this section to the policy of insurance would:**  
15 (1) **for a policy issued before January 1, 2025, give a right to**  
16 **a beneficiary that the beneficiary was not reasonably intended**  
17 **to have, other than the beneficiary's right to insurance**



- 1 coverage until the time limitation described in subsection (e);  
 2 or  
 3 (2) for a policy issued at any time, relieve a beneficiary from  
 4 a duty or liability imposed on the insured by the terms of the  
 5 policy.  
 6 (c) The following definitions apply throughout this section:  
 7 (1) "Beneficiary" has the meaning set forth in  
 8 IC 32-17-14-3(1).  
 9 (2) "Casualty insurance policy or liability insurance policy"  
 10 means a policy of insurance that is described in Class 2 or  
 11 Class 3 of IC 27-1-5-1.  
 12 (3) "Insurable interest" means an insured's interest in real or  
 13 personal property, concerning which the insured is entitled to  
 14 the benefits of insurance coverage under a casualty insurance  
 15 policy or liability insurance policy.  
 16 (4) "Insured" means a person who is entitled to the benefits  
 17 of insurance coverage under a casualty insurance policy or  
 18 liability insurance policy.  
 19 (5) "Named insured" means a person identified by name as an  
 20 insured under a casualty insurance policy or liability  
 21 insurance policy.  
 22 (6) "Transfer" means an ownership change in a named  
 23 insured's insurable interest in real or personal property to a  
 24 beneficiary of a transfer on death transfer that occurs as a  
 25 consequence of the named insured's death.  
 26 (7) "Transferee" means a person who has acquired or  
 27 received a named insured's insurable interest in real or  
 28 personal property through a transfer.  
 29 (8) "Transfer on death transfer" has the meaning set forth in  
 30 IC 32-17-14-3(17).  
 31 (d) Subject to subsection (e), each transferee of a named  
 32 insured's insurable interest in real or personal property is also an  
 33 insured to the extent of the named insured's insurable interest in  
 34 real or personal property that the transferee has acquired or  
 35 received through a transfer.  
 36 (e) Except as provided in IC 32-38-3-1, for a period of one  
 37 hundred twenty (120) days immediately following the death of the  
 38 insured, each transferee is an insured under a casualty insurance  
 39 policy or liability insurance policy insuring the real or personal  
 40 property the transferee acquired or received through a transfer. At  
 41 the time of the insured's death, the transferee succeeds to all rights  
 42 and obligations of the insured under the casualty insurance policy



1 **or liability insurance policy for the one hundred twenty (120) day**  
 2 **period.**

3 SECTION 2. IC 32-17-14-11, AS AMENDED BY P.L.36-2011,  
 4 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 2024]: Sec. 11. (a) A transfer on death deed transfers the  
 6 interest provided to the beneficiary if the transfer on death deed is:

- 7 (1) executed by the owner or owner's legal representative; and
- 8 (2) recorded with the recorder of deeds in the county in which the  
 9 real property is situated before the death of the owner.

10 (b) A transfer on death deed is void if it is not recorded with the  
 11 recorder of deeds in the county in which the real property is situated  
 12 before the death of the owner.

13 (c) A transfer on death deed is not required to be supported by  
 14 consideration or delivered to the grantee beneficiary.

15 (d) A transfer on death deed may be used to transfer an interest in  
 16 real property to either a revocable or an irrevocable trust.

17 (e) If the owner records a transfer on death deed, the effect of the  
 18 recording the transfer on death deed is determined as follows:

- 19 (1) If the owner's interest in the real property is as a tenant by the  
 20 entirety, the conveyance is inoperable and void unless the other  
 21 spouse joins in the conveyance.
- 22 (2) If the owner's interest in the real property is as a joint tenant  
 23 with rights of survivorship, the conveyance severs the joint  
 24 tenancy and the cotenancy becomes a tenancy in common.
- 25 (3) If the owner's interest in the real property is as a joint tenant  
 26 with rights of survivorship and the property is subject to a  
 27 beneficiary designation, a conveyance of any joint owner's interest  
 28 has no effect on the original beneficiary designation for the  
 29 nonsevering joint tenant.
- 30 (4) If the owner's interest is as a tenant in common, the owner's  
 31 interest passes to the beneficiary as a transfer on death transfer.
- 32 (5) If the owner's interest is a life estate determined by the owner's  
 33 life, the conveyance is inoperable and void.
- 34 (6) If the owner's interest is any other interest, the interest passes  
 35 in accordance with this chapter and the terms and conditions of  
 36 the conveyance establishing the interest. If a conflict exists  
 37 between the conveyance establishing the interest and this chapter,  
 38 the terms and conditions of the conveyance establishing the  
 39 interest prevail.

40 (f) A beneficiary designation in a transfer on death deed may be  
 41 worded in substance as "(insert owner's name) conveys and warrants  
 42 (or quitclaims) to (insert owner's name), TOD to (insert beneficiary's



1 name)". This example is not intended to be exhaustive.

2 (g) A transfer on death deed using the phrase "pay on death to" or  
3 the abbreviation "POD" may not be construed to require the liquidation  
4 of the real property being transferred.

5 (h) This section does not preclude other methods of conveying real  
6 property that are permitted by law and have the effect of postponing  
7 enjoyment of an interest in real property until after the death of the  
8 owner. This section applies only to transfer on death deeds and does  
9 not invalidate any deed that is otherwise effective by law to convey title  
10 to the interest and estates provided in the deed.

11 (i) The endorsement of the auditor under IC 36-2-11-14 is not  
12 necessary to record a transfer on death deed.

13 **(j) For a transfer on death deed executed after January 1, 2025,**  
14 **the transfer on death deed may include the following warning:**

15 **"WARNING: After the death of the owner, the owner's**  
16 **insurance policy is required by IC 27-1-13-18 to cover the real**  
17 **property transferred for only one hundred twenty (120) days.**  
18 **Once the one hundred twenty (120) day period expires, the**  
19 **insurance policy may no longer cover the real property and**  
20 **the beneficiary of a transfer on death deed and the real**  
21 **property may become uninsured."**

22 **A transfer on death deed is not invalid due to the failure to include**  
23 **the warning described in this subsection, or due to a defect in the**  
24 **wording of the warning described in this subsection.**

25 SECTION 3. IC 32-17-14-26, AS AMENDED BY P.L.51-2014,  
26 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2024]: Sec. 26. (a) If an agreement between the owner and a  
28 transferring entity is required to carry out a transfer on death transfer  
29 as described in section 7 of this chapter, a transferring entity may not  
30 adopt rules for the making, execution, acceptance, and revocation of a  
31 beneficiary designation that are inconsistent with this chapter.

32 (b) The following rules apply to a beneficiary designation:

33 (1) A beneficiary designation or a request for registration of  
34 property in beneficiary form must be made in writing, signed by  
35 the owner, dated, and, in the case of a transfer on death deed,  
36 compliant with all requirements for the recording of deeds.

37 (2) A security that is not registered in the name of the owner may  
38 be registered in beneficiary form on instructions given by a broker  
39 or person delivering the security.

40 (3) A beneficiary designation may designate one (1) or more  
41 primary beneficiaries and one (1) or more contingent  
42 beneficiaries.



- 1 (4) On property registered in beneficiary form, a primary  
2 beneficiary is the person shown immediately following the  
3 transfer on death direction. Words indicating that the person is a  
4 primary beneficiary are not required. The name of a contingent  
5 beneficiary in the registration must have the words "contingent  
6 beneficiary" or words of similar meaning to indicate the  
7 contingent nature of the interest being transferred.
- 8 (5) Multiple surviving beneficiaries share equally in the property  
9 being transferred unless a different percentage or fractional share  
10 is stated for each beneficiary. If a percentage or fractional share  
11 is designated for multiple beneficiaries, the surviving  
12 beneficiaries share in the proportion that their designated shares  
13 bear to each other.
- 14 (6) A transfer of unequal shares to multiple beneficiaries for  
15 property registered in beneficiary form may be expressed in  
16 numerical form following the name of the beneficiary in the  
17 registration.
- 18 (7) A transfer on death transfer of property also transfers any  
19 interest, rent, royalties, earnings, dividends, or credits earned or  
20 declared on the property but not paid or credited before the  
21 owner's death.
- 22 (8) If a distribution by a transferring entity under a transfer on  
23 death transfer results in fractional shares in a security or other  
24 property that is not divisible, the transferring entity may distribute  
25 the fractional shares in the name of all beneficiaries as tenants in  
26 common or as the beneficiaries may direct, or the transferring  
27 entity may sell the property that is not divisible and distribute the  
28 proceeds to the beneficiaries in the proportions to which they are  
29 entitled.
- 30 (9) On the death of the owner, the property, minus all amounts  
31 and charges owed by the owner to the transferring entity, belongs  
32 to the surviving beneficiaries and, in the case of substitute  
33 beneficiaries permitted under section 22 of this chapter, the lineal  
34 descendants of designated beneficiaries who did not survive the  
35 owner are entitled to the property as follows:
- 36 (A) If there are multiple primary beneficiaries and a primary  
37 beneficiary does not survive the owner and does not have a  
38 substitute under section 22 of this chapter, the share of the  
39 nonsurviving beneficiary is allocated among the surviving  
40 beneficiaries in the proportion that their shares bear to each  
41 other.
- 42 (B) If there are no surviving primary beneficiaries and there



1 are no substitutes for the nonsurviving primary beneficiaries  
 2 under section 22 of this chapter, the property belongs to the  
 3 surviving contingent beneficiaries in equal shares or according  
 4 to the percentages or fractional shares stated in the  
 5 registration.

6 (C) If there are multiple contingent beneficiaries and a  
 7 contingent beneficiary does not survive the owner and does not  
 8 have a substitute under section 22 of this chapter, the share of  
 9 the nonsurviving contingent beneficiary is allocated among the  
 10 surviving contingent beneficiaries in the proportion that their  
 11 shares bear to each other.

12 (10) If a trustee designated as a beneficiary:

13 (A) does not survive the owner;

14 (B) resigns; or

15 (C) is unable or unwilling to execute the trust as trustee and no  
 16 successor trustee is appointed in the twelve (12) months  
 17 following the owner's death;

18 the transferring entity may make the distribution as if the trust did  
 19 not survive the owner.

20 (11) If a trustee is designated as a beneficiary and no affidavit of  
 21 certification of trust or probated will creating an express trust is  
 22 presented to the transferring entity within the twelve (12) months  
 23 after the owner's death, the transferring entity may make the  
 24 distribution as if the trust did not survive the owner.

25 (12) If the transferring entity is not presented evidence during the  
 26 twelve (12) months after the owner's death that there are lineal  
 27 descendants of a nonsurviving beneficiary for whom LDPS  
 28 distribution applies who survived the owner, the transferring  
 29 entity may make the transfer as if the nonsurviving beneficiary's  
 30 descendants also failed to survive the owner.

31 (13) If a beneficiary cannot be located at the time the transfer is  
 32 made to located beneficiaries, the transferring entity shall hold the  
 33 missing beneficiary's share. If the missing beneficiary's share is  
 34 not claimed by the beneficiary or by the beneficiary's personal  
 35 representative or successor during the twelve (12) months after  
 36 the owner's death, the transferring entity shall transfer the share  
 37 as if the beneficiary did not survive the owner.

38 (14) A transferring entity has no obligation to attempt to locate a  
 39 missing beneficiary, to pay interest on the share held for a missing  
 40 beneficiary, or to invest the share in any different property.

41 (15) Cash, interest, rent, royalties, earnings, or dividends payable  
 42 to a missing beneficiary may be held by the transferring entity at



- 1 interest or reinvested by the transferring entity in the account or  
 2 in a dividend reinvestment account associated with a security held  
 3 for the missing beneficiary.
- 4 (16) If a transferring entity is required to make a transfer on death  
 5 transfer to a minor or an incapacitated adult, the transfer may be  
 6 made under the Indiana Uniform Transfers to Minors Act, the  
 7 Indiana Uniform Custodial Trust Act, or a similar law of another  
 8 state.
- 9 (17) A written request for the execution of a transfer on death  
 10 transfer may be made by any beneficiary, a beneficiary's legal  
 11 representative or attorney in fact, or the owner's personal  
 12 representative.
- 13 **(18) For a transfer on death deed executed before January 1,**  
 14 **2025,** a transfer under a transfer on death deed occurs  
 15 automatically upon the owner's death subject to the requirements  
 16 of ~~subdivision (20)~~ **subdivision (21)** and does not require a  
 17 request for the execution of the transfer.
- 18 **(19) For a transfer on death deed executed after January 1,**  
 19 **2025, a transfer under a transfer on death deed:**
- 20 **(A) occurs automatically upon the owner's death, subject**  
 21 **to the requirements of subdivision (22); and**
- 22 **(B) does not require a request for the execution of the**  
 23 **transfer.**
- 24 ~~(19)~~ **(20)** A written request for the execution of a transfer on death  
 25 transfer must be accompanied by the following:
- 26 (A) A certificate or instrument evidencing ownership of the  
 27 contract, account, security, or property.
- 28 (B) Proof of the deaths of the owner and any nonsurviving  
 29 beneficiary.
- 30 (C) An inheritance tax waiver from states that require it.
- 31 (D) In the case of a request by a legal representative, a copy of  
 32 the instrument creating the legal authority or a certified copy  
 33 of the court order appointing the legal representative.
- 34 (E) Any other proof of the person's entitlement that the  
 35 transferring entity may require.
- 36 ~~(20)~~ **(21)** On the death of an owner whose transfer on death deed  
 37 has been recorded, the beneficiary shall file an affidavit in the  
 38 office of the recorder of the county in which the real property is  
 39 located. The affidavit must be endorsed by the county auditor  
 40 under IC 36-2-11-14 in order to be recorded. The affidavit must  
 41 contain the following:
- 42 (A) The legal description of the property.





- 1 (B) The date of death of the owner.
- 2 (C) The name and address of each designated beneficiary who
- 3 survives the owner or is in existence on the date of the owner's
- 4 death.
- 5 (D) The name of each designated beneficiary who has not
- 6 survived the owner's death or is not in existence on the date of
- 7 the owner's death.
- 8 (E) A cross-reference to the recorded transfer on death deed.

9 **(22) On the death of an owner whose transfer on death deed**  
 10 **has been recorded, the beneficiary may file an affidavit in the**  
 11 **office of the recorder of the county in which the real property**  
 12 **is located. The affidavit must be endorsed by the county**  
 13 **auditor under IC 36-2-11-14 to be recorded. The affidavit**  
 14 **must contain the following:**

- 15 (A) The legal description of the property.
- 16 (B) The date of death of the owner.
- 17 (C) The name and address of each designated beneficiary
- 18 who survives the owner or is in existence on the date of the
- 19 owner's death.
- 20 (D) The name of each designated beneficiary who has not
- 21 survived the owner's death or is not in existence on the
- 22 date of the owner's death.
- 23 (E) A cross-reference to the recorded transfer on death
- 24 deed.

25 (c) A beneficiary designation is presumed to be valid. A party may  
 26 rely on the presumption of validity unless the party has actual  
 27 knowledge that the beneficiary designation was not validly executed.  
 28 A person who acts in good faith reliance on a transfer on death deed is  
 29 immune from liability to the same extent as if the person had dealt  
 30 directly with the named owner and the named owner had been  
 31 competent and not incapacitated.

32 SECTION 4. IC 32-17-14-28, AS AMENDED BY P.L.6-2010,  
 33 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2024]: Sec. 28. (a) The protections provided to a transferring  
 35 entity or to a purchaser or lender for value by this chapter do not affect  
 36 the rights of beneficiaries or others involved in disputes that:

- 37 (1) are with parties other than a transferring entity or purchaser or
- 38 lender for value; and
- 39 (2) concern the ownership of property transferred under this
- 40 chapter.

41 (b) Unless the payment or transfer can no longer be challenged  
 42 because of adjudication, estoppel, or limitations, a transferee of money



1 or property under a transfer on death transfer that was improperly  
2 distributed or paid is liable for:

- 3 (1) the return of the money or property, including income earned  
4 on the money or property, to the transferring entity; or  
5 (2) the delivery of the money or property, including income  
6 earned on the money or property, to the rightful transferee.

7 In addition, the transferee is liable for the amount of attorney's fees and  
8 costs incurred by the rightful transferee in bringing the action in court.

9 (c) If a transferee of money or property under a transfer on death  
10 transfer that was improperly distributed or paid does not have the  
11 property, the transferee is liable for an amount equal to the sum of:

- 12 (1) the value of the property as of the date of the disposition;  
13 (2) the income and gain that the transferee received from the  
14 property and its proceeds; and  
15 (3) the amount of attorney's fees and costs incurred by the rightful  
16 transferee in bringing the action in court.

17 (d) If a transferee of money or property under a transfer on death  
18 transfer that was improperly distributed or paid encumbers the  
19 property, the transferee:

- 20 (1) shall satisfy the debt incurred in an amount sufficient to  
21 release any security interest, lien, or other encumbrance on the  
22 property; and  
23 (2) is liable for the amount of attorney's fees and costs incurred by  
24 the rightful transferee in bringing the action in court.

25 (e) A purchaser for value of property or a lender who acquires a  
26 security interest in the property from a beneficiary of a transfer on  
27 death transfer:

- 28 (1) in good faith; or  
29 (2) without actual knowledge that:  
30 (A) the transfer was improper; or  
31 (B) information in an affidavit provided under section  
32 ~~26(b)(20)~~ **26(b)(21)** of this chapter was not true;

33 takes the property free of any claims of or liability to the owner's estate,  
34 creditors of the owner's estate, persons claiming rights as beneficiaries  
35 of the transfer on death transfer, or heirs of the owner's estate. A  
36 purchaser or lender for value has no duty to verify sworn information  
37 relating to the transfer on death transfer.

38 (f) The protection provided by subsection (e) applies to information  
39 that relates to the beneficiary's ownership interest in the property and  
40 the beneficiary's right to sell, encumber, and transfer good title to a  
41 purchaser or lender but does not relieve a purchaser or lender from the  
42 notice provided by instruments of record with respect to the property.



1 (g) A transfer on death transfer that is improper under section 22,  
 2 23, 24, or 25 of this chapter imposes no liability on the transferring  
 3 entity if the transfer is made in good faith. The remedy of a rightful  
 4 transferee must be obtained in an action against the improper  
 5 transferee.

6 SECTION 5. IC 32-21-4-1, AS AMENDED BY P.L.2-2021,  
 7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2024]: Sec. 1. (a) As used in this section, "conveyance" means  
 9 an electronic document as defined in IC 32-21-2.5-3 or a paper  
 10 document as defined in IC 32-21-2.5-8(a) that is:

- 11 (1) a deed or other instrument concerning land or an interest in  
 12 land, except a last will and testament;  
 13 (2) a lease or memorandum of lease for a term exceeding three (3)  
 14 years;  
 15 (3) a transfer on death deed as defined under IC 32-17-14-3(16)  
 16 or an affidavit pursuant to ~~IC 32-17-14-26(b)(20);~~  
 17 **IC 32-17-14-26(b)(21);** or  
 18 (4) a land contract or a memorandum of land contract for the sale  
 19 and purchase of land.

20 (b) A conveyance or mortgage must be recorded in the recorder's  
 21 office in the county where the land is located.

22 (c) A conveyance or mortgage takes priority according to the time  
 23 of its recording. The conveyance or mortgage is fraudulent and void as  
 24 against any subsequent purchaser, lessee, or mortgagee in good faith  
 25 and for a valuable consideration if the purchaser's, lessee's, or  
 26 mortgagee's deed, mortgage, or lease is first recorded.

27 (d) This subsection applies regardless of when an instrument is  
 28 recorded. If:

- 29 (1) an instrument is recorded; and  
 30 (2) the instrument:  
 31 (A) does not comply with the requirements of:  
 32 (i) IC 32-21-2-3, including whether there was both an  
 33 acknowledgment and proof on the instrument; or  
 34 (ii) IC 32-21-2-7;  
 35 (B) does not comply with the technical requirements of  
 36 IC 36-2-11-16(c);  
 37 (C) was executed and included an acknowledgment executed  
 38 pursuant to the terms of any executive order issued by the  
 39 governor or an order of the supreme court; or  
 40 (D) was recorded and indexed by a county recorder as an  
 41 electronic record (as defined in IC 26-2-8-102);

42 the instrument is validly recorded and provides constructive notice of



1 the contents of the instrument as of the date of recording.  
2 SECTION 6. IC 32-38-3-1, AS ADDED BY P.L.95-2007,  
3 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2024]: Sec. 1. **Notwithstanding any other law**, the trustee of  
5 a trust is considered to be the insured owner under a policy or  
6 commitment that insures or proposes to insure an interest in real  
7 property that is transferred to the trust if:  
8 (1) the transferee of the interest in real property is the trustee of  
9 the trust, the trust was established by the named insured owner,  
10 and the transferor is the named insured owner;  
11 (2) the named insured owner reserves the right to amend or  
12 revoke the trust during the named insured owner's lifetime;  
13 (3) the named insured owner is a natural person; and  
14 (4) the transfer of the interest in real property is made by the  
15 named insured owner personally or by:  
16 (A) the named insured owner's attorney in fact;  
17 (B) the named insured owner's guardian or other similar  
18 person in a guardianship or protective proceeding in which the  
19 named insured owner is an incapacitated or a protected person;  
20 or  
21 (C) the personal representative of the deceased named insured  
22 owner's estate under the terms and conditions of the named  
23 insured owner's last will and testament;  
24 even if the named insured owner transfers the interest in real property  
25 to the trustee described in this section after the effective date of the  
26 policy or commitment.

