

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1432

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AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 22-3-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) For the purpose of complying with IC 22-3-5-1, groups of employers are hereby authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to such reasonable conditions and restrictions as may be fixed by the department of insurance.

(b) Membership in such mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with IC 22-3-5-1.

(c) ~~Subsection (a) does not apply to mutual insurance associations and reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of IC 22-3-2 through IC 22-3-6 and to such reasonable conditions and restrictions as may be fixed by the worker's compensation board.~~

SECTION 2. IC 22-3-7-34, AS AMENDED BY P.L.233-2015, SECTION 320, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 34. (a) As used in this section, "person" does not include:

- (1) an owner who contracts for performance of work on the owner's owner occupied residential property; or

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(2) a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) Every employer bound by the compensation provisions of this chapter, except the state, counties, townships, cities, towns, school cities, school towns, other municipal corporations, state institutions, state boards, and state commissions, shall insure the payment of compensation to the employer's employees and their dependents in the manner provided in this chapter, or procure from the worker's compensation board a certificate authorizing the employer to carry such risk without insurance. While that insurance or certificate remains in force, the employer, or those conducting the employer's business, and the employer's occupational disease insurance carrier shall be liable to any employee and the employee's dependents for disablement or death from occupational disease arising out of and in the course of employment only to the extent and in the manner specified in this chapter.

(c) Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection (b), shall:

(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; or

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter.

In the latter case the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(d) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection (c) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting attorney of the county shall prosecute all violations upon written request of the board. The violations shall be prosecuted in the name of

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the state.

(e) Whenever an employer has complied with subsection (c) relating to self-insurance, the worker's compensation board shall issue to the employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least thirty (30) days notice, and a hearing to the employer, revoke the certificate, upon presentation of satisfactory evidence for the revocation. After the revocation, the board may grant a new certificate to the employer upon the employer's petition, and satisfactory proof of the employer's financial ability.

(f)(1) Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this chapter. A substitute system may not be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this chapter. It may not be approved if it requires contributions from the employees unless it confers benefits in addition to those provided under this chapter, which are at least commensurate with such contributions.

(f)(2) The substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties, if it appears that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter. On termination, the board shall determine the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

(g)(1) No insurer shall enter into or issue any policy of insurance under this chapter until its policy form has been submitted to and approved by the worker's compensation board. The board shall not approve the policy form of any insurance company until the company shall file with it the certificate of the insurance commissioner showing that the company is authorized to transact the business of worker's compensation insurance in Indiana. The filing of a policy form by any insurance company or reciprocal insurance association with the board for approval constitutes on the part of the company or association a conclusive and unqualified acceptance of each of the compensation provisions of this chapter, and an agreement by it to be bound by the compensation provisions of this chapter.

(g)(2) All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees

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and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

(g)(3) Any provision in any such policy attempting to limit or modify the liability of the company or association insuring the same shall be wholly void.

(g)(4) Every policy of any company or association shall be deemed to include the following provisions:

"(A) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under this chapter.

(B) This policy is subject to the provisions of this chapter relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for such employees, the acceptance of such liability by the insured, the adjustment, trial and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation, or death benefits.

(C) Between this insurer and the employee, notice to or knowledge of the occurrence of the disablement on the part of the insured (the employer) shall be notice or knowledge thereof, on the part of the insurer. The jurisdiction of the insured (the employer) for the purpose of this chapter is the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to the awards, judgments and decrees rendered against the insured (the employer) under this chapter.

(D) This insurer will promptly pay to the person entitled to the same all benefits conferred by this chapter, including all physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, and all installments of compensation or death benefits that may be awarded or agreed upon under this chapter. The obligation of this insurer shall not be affected by any default of the insured (the employer) after disablement or by any default in giving of any notice required by this policy, or otherwise. This policy is a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital services, charges for hospital supplies, charges for burial, compensation, or death benefits, and shall be enforceable in the name of the person.

(E) Any termination of this policy by cancellation shall not be

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effective as to employees of the insured covered hereby unless at least thirty (30) days prior to the taking effect of such cancellation, a written notice giving the date upon which such termination is to become effective has been received by the worker's compensation board of Indiana at its office in Indianapolis, Indiana.

(F) This policy shall automatically expire one (1) year from the effective date of the policy, unless the policy covers a period of three (3) years, in which event, it shall automatically expire three (3) years from the effective date of the policy. The termination either of a one (1) year or a three (3) year policy, is effective as to the employees of the insured covered by the policy."

(g)(5) All claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the worker's compensation board may be made against either the employer or the insurer or both.

(g)(6) If any insurer shall fail to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail to comply with this chapter, the worker's compensation board shall revoke the approval of its policy forms, and shall not accept any further proofs of insurance from it until it shall have paid the award or judgment or complied with this chapter, and shall have resubmitted its policy form and received the approval of the policy by the worker's compensation board.

(h) No policy of insurance covering the liability of an employer for worker's compensation shall be construed to cover the liability of the employer under this chapter for any occupational disease unless the liability is expressly accepted by the insurance carrier issuing the policy and is endorsed in that policy. The insurance or security in force to cover compensation liability under this chapter shall be separate from the insurance or security under IC 22-3-2 through IC 22-3-6. Any insurance contract covering liability under either part of this article need not cover any liability under the other.

(i) For the purpose of complying with subsection (c), groups of employers are authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to any reasonable conditions and restrictions fixed by the department of insurance. ~~This subsection does not apply to mutual insurance associations and reciprocal or interinsurance exchanges formed and operating on or before January 1, 1991, which shall continue to operate subject to the provisions of this chapter and to such reasonable conditions and~~

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~~restrictions as may be fixed by the worker's compensation board.~~

(j) Membership in a mutual insurance association or a reciprocal or interinsurance exchange so proved, together with evidence of the payment of premiums due, is evidence of compliance with subsection (c).

(k) Any person bound under the compensation provisions of this chapter, contracting for the performance of any work exceeding one thousand dollars (\$1,000) in value, in which the hazard of an occupational disease exists, by a contractor subject to the compensation provisions of this chapter without exacting from the contractor a certificate from the worker's compensation board showing that the contractor has complied with subsections (b), (c), and (d), shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such contractor, due to occupational disease arising out of and in the course of the performance of the work covered by such contract.

(l) Any contractor who sublets any contract for the performance of any work to a subcontractor subject to the compensation provisions of this chapter, without obtaining a certificate from the worker's compensation board showing that the subcontractor has complied with subsections (b), (c), and (d), is liable to the same extent as the subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expense on account of the injury or death of any employee of the subcontractor due to occupational disease arising out of and in the course of the performance of the work covered by the subcontract.

(m) A person paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses, under subsection (k) or (l), may recover the amount paid or to be paid from any person who would otherwise have been liable for the payment thereof and may, in addition, recover the litigation expenses and attorney's fees incurred in the action before the worker's compensation board as well as the litigation expenses and attorney's fees incurred in an action to collect the compensation, medical expenses, and burial expenses.

(n) Every claim filed with the worker's compensation board under this section shall be instituted against all parties liable for payment. The worker's compensation board, in an award under subsection (k), shall fix the order in which such parties shall be exhausted, beginning with the immediate employer and, in an award under subsection (l), shall determine whether the subcontractor has the financial ability to pay the compensation and medical expenses when due and, if not, shall

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order the contractor to pay the compensation and medical expenses.

SECTION 3. IC 27-1-20-28 IS REPEALED [EFFECTIVE JULY 1, 2021]. Sec. 28: The provisions of this article shall not apply to any interinsurance association or reciprocal or interinsurance exchange organized under and by virtue of Acts 1915, c.106, as amended and supplemented; and formed and operating on or before January 1, 1991; for the sole purpose of writing worker's compensation insurance.

SECTION 4. IC 27-1-45.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

**Chapter 45.5. Indiana Public Employers' Plan**

**Sec. 1.** As used in this chapter, "IPEP" refers to the Indiana Public Employers' Plan, Inc., which was originally incorporated under the name Indiana Employers' Compensation Plan, Inc., as a domestic nonprofit corporation on December 11, 1989.

**Sec. 2.** As used in this chapter, "political subdivision" has the meaning set forth in IC 34-6-2-110.

**Sec. 3. (a)** IPEP shall apply to the insurance commissioner for a certificate of authority to transact the business of insurance in Indiana as a domestic tax exempt reciprocal insurance company.

**(b)** The bylaws or articles of incorporation prepared by IPEP for purposes of IPEP's conversion to a domestic tax exempt reciprocal insurance company must require that the board of the domestic tax exempt reciprocal insurance company be made up of at least seven (7) individuals.

**(c)** IPEP, in converting to a domestic tax exempt reciprocal insurance company, must meet the requirements and conditions for the formation of a domestic tax exempt reciprocal insurance company set forth in IC 27-1-6, including an examination under IC 27-1-6-17.

**Sec. 4. (a)** After:

- (1)** receiving a certificate of authority from the insurance commissioner to transact the business of insurance in Indiana as a domestic tax exempt reciprocal insurance company; and
- (2)** making any changes in structure and legal status necessary or beneficial to the conversion of IPEP from a domestic nonprofit corporation into a domestic tax exempt reciprocal insurance company;

IPEP shall begin transacting the business of insurance as a domestic tax exempt reciprocal insurance company.

**(b)** All of the following apply on the date on which IPEP begins transacting the business of insurance as a domestic tax exempt

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**reciprocal insurance company:**

- (1) All powers, duties, agreements, and liabilities that IPEP had as a domestic nonprofit corporation immediately before the date are transferred to the domestic tax exempt reciprocal insurance company as the successor entity.**
- (2) All records and property that IPEP had as a domestic nonprofit corporation immediately before the date, including all funds under the control or supervision of IPEP, are transferred to the domestic tax exempt reciprocal insurance company as the successor entity.**
- (3) Any amounts owed to IPEP immediately before the date are considered to be owed to the domestic tax exempt reciprocal insurance company as the successor entity.**
- (4) A reference to IPEP in a statute, rule, or other document is considered a reference to the domestic insurance company as the successor entity.**
- (5) All powers, duties, agreements, and liabilities of IPEP immediately before the date with respect to bonds issued by IPEP in connection with any trust agreement or indenture securing the bonds are transferred to the domestic tax exempt reciprocal insurance company as the successor entity. The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of IPEP remain unchanged despite the transfer of the powers, duties, agreements, and liabilities of IPEP to the domestic tax exempt reciprocal insurance company as the successor entity.**

SECTION 5. IC 27-6-4-1 IS REPEALED [EFFECTIVE JULY 1, 2021]. Sec. 4. Nothing in IC 27-6-6-3, IC 27-6-6-6, or IC 27-6-6-7 shall be construed to annul, restrict, or in any manner interfere with the licensing and supervision of mutual insurance associations and reciprocal associations formed and operating on or before January 1, 1991, solely for the writing of worker's compensation insurance as provided under IC 22-3.

SECTION 6. IC 27-7-2-26 IS REPEALED [EFFECTIVE JULY 1, 2021]. Sec. 26. Nothing in this chapter shall be construed to annul, restrict, or in any manner interfere with the licensing and supervision of mutual insurance associations and reciprocal associations formed and operating on or before January 1, 1991, solely for the writing of worker's compensation insurance as provided under IC 22-3-2 through IC 22-3-6.





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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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