

HOUSE BILL No. 1432

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3; IC 27-1; IC 27-6-4-1; IC 27-7-2-26.

Synopsis: Political subdivision risk management. Requires the Indiana Public Employers' Plan, Inc. (IPEP), which was established as a domestic nonprofit corporation, to apply for a certificate of authority to transact business as a domestic tax exempt reciprocal insurance company. Provides that, when IPEP receives the certificate of authority and begins to transact business as a domestic tax exempt reciprocal insurance company, all powers, duties, agreements, and liabilities that IPEP had as a domestic nonprofit corporation are transferred to the domestic tax exempt reciprocal insurance company as the successor entity. Repeals and strikes provisions under which mutual insurance associations and reciprocal associations formed and operating for the writing of worker's compensation insurance are exempt from certain laws.

Effective: July 1, 2021.

Lehman, Carbaugh

January 14, 2021, read first time and referred to Committee on Financial Institutions and Insurance.



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 BILL No. 1432

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

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

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

17 SECTION 2. IC 22-3-7-34, AS AMENDED BY P.L.233-2015,



1 SECTION 320, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2021]: Sec. 34. (a) As used in this section,
 3 "person" does not include:

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

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

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

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

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

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

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

38 (d) Every employer required to carry insurance under this section
 39 shall file with the worker's compensation board in the form prescribed
 40 by it, within ten (10) days after the termination of the employer's
 41 insurance by expiration or cancellation, evidence of the employer's
 42 compliance with subsection (c) and other provisions relating to the



1 insurance under this chapter. The venue of all criminal actions under
2 this section lies in the county in which the employee was last exposed
3 to the occupational disease causing disablement. The prosecuting
4 attorney of the county shall prosecute all violations upon written
5 request of the board. The violations shall be prosecuted in the name of
6 the state.

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

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

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

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



1 provisions of this chapter, and an agreement by it to be bound by the
2 compensation provisions of this chapter.

3 (g)(2) All policies of insurance companies and of reciprocal
4 insurance associations, insuring the payment of compensation under
5 this chapter, shall be conclusively presumed to cover all the employees
6 and the entire compensation liability of the insured under this chapter
7 in all cases in which the last day of the exposure rendering the
8 employer liable is within the effective period of such policy.

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

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

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

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

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

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



1 person entitled to physician's fees, nurse's charges, fees for
2 hospital services, charges for hospital services, charges for
3 hospital supplies, charges for burial, compensation, or death
4 benefits, and shall be enforceable in the name of the person.

5 (E) Any termination of this policy by cancellation shall not be
6 effective as to employees of the insured covered hereby unless at
7 least thirty (30) days prior to the taking effect of such
8 cancellation, a written notice giving the date upon which such
9 termination is to become effective has been received by the
10 worker's compensation board of Indiana at its office in
11 Indianapolis, Indiana.

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

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

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

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

40 (i) For the purpose of complying with subsection (c), groups of
41 employers are authorized to form mutual insurance associations or
42 reciprocal or interinsurance exchanges subject to any reasonable



1 conditions and restrictions fixed by the department of insurance. This
2 subsection does not apply to mutual insurance associations and
3 reciprocal or interinsurance exchanges formed and operating on or
4 before January 1, 1991, which shall continue to operate subject to the
5 provisions of this chapter and to such reasonable conditions and
6 restrictions as may be fixed by the worker's compensation board:

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

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

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

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

41 (n) Every claim filed with the worker's compensation board under
42 this section shall be instituted against all parties liable for payment.



1 The worker's compensation board, in an award under subsection (k),
 2 shall fix the order in which such parties shall be exhausted, beginning
 3 with the immediate employer and, in an award under subsection (l),
 4 shall determine whether the subcontractor has the financial ability to
 5 pay the compensation and medical expenses when due and, if not, shall
 6 order the contractor to pay the compensation and medical expenses.

7 SECTION 3. IC 27-1-20-28 IS REPEALED [EFFECTIVE JULY 1,
 8 2021]. ~~Sec. 28: The provisions of this article shall not apply to any~~
 9 ~~interinsurance association or reciprocal or interinsurance exchange~~
 10 ~~organized under and by virtue of Acts 1915, c.106, as amended and~~
 11 ~~supplemented, and formed and operating on or before January 1, 1991,~~
 12 ~~for the sole purpose of writing worker's compensation insurance.~~

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

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

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

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

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

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

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

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

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



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

4 (b) All of the following apply on the date on which IPEP begins
 5 transacting the business of insurance as a domestic tax exempt
 6 reciprocal insurance company:

7 (1) All powers, duties, agreements, and liabilities that IPEP
 8 had as a domestic nonprofit corporation immediately before
 9 the date are transferred to the domestic tax exempt reciprocal
 10 insurance company as the successor entity.

11 (2) All records and property that IPEP had as a domestic
 12 nonprofit corporation immediately before the date, including
 13 all funds under the control or supervision of IPEP, are
 14 transferred to the domestic tax exempt reciprocal insurance
 15 company as the successor entity.

16 (3) Any amounts owed to IPEP immediately before the date
 17 are considered to be owed to the domestic tax exempt
 18 reciprocal insurance company as the successor entity.

19 (4) A reference to IPEP in a statute, rule, or other document
 20 is considered a reference to the domestic insurance company
 21 as the successor entity.

22 (5) All powers, duties, agreements, and liabilities of IPEP
 23 immediately before the date with respect to bonds issued by
 24 IPEP in connection with any trust agreement or indenture
 25 securing the bonds are transferred to the domestic tax exempt
 26 reciprocal insurance company as the successor entity. The
 27 rights of the trustee under any trust agreement or indenture
 28 and the rights of the bondholders of IPEP remain unchanged
 29 despite the transfer of the powers, duties, agreements, and
 30 liabilities of IPEP to the domestic tax exempt reciprocal
 31 insurance company as the successor entity.

32 SECTION 5. IC 27-6-4-1 IS REPEALED [EFFECTIVE JULY 1,
 33 2021]. Sec. 1: Nothing in IC 27-6-6-3, IC 27-6-6-6, or IC 27-6-6-7 shall
 34 be construed to annul, restrict, or in any manner interfere with the
 35 licensing and supervision of mutual insurance associations and
 36 reciprocal associations formed and operating on or before January 1,
 37 1991, solely for the writing of worker's compensation insurance as
 38 provided under IC 22-3.

39 SECTION 6. IC 27-7-2-26 IS REPEALED [EFFECTIVE JULY 1,
 40 2021]. Sec. 26: Nothing in this chapter shall be construed to annul,
 41 restrict, or in any manner interfere with the licensing and supervision
 42 of mutual insurance associations and reciprocal associations formed



1 and operating on or before January 1, 1991, solely for the writing of
2 worker's compensation insurance as provided under IC 22-3-2 through
3 IC 22-3-6.

