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I. THE STATE OF INDIANA



A. FREQUENTLY CITED INDIANA STATUTES

1. Automobile Insurance

I.C. § 9-25-2-3

Financial Responsibility

Requires insurance in the following amounts:

- (1) \$25,000.00 per person;
- (2) \$50,000.00 per accident; and
- (3) \$10,000.00 property coverage per accident.

I.C. § 27-7-5-2(a)

UM/UIM Coverage

Requires insurers to offer UM/UIM coverage with every bodily injury liability policy of insurance in an amount not less than \$50,000.00 or the limit of liability insurance, whichever is greater and which can only be rejected in writing.

I.C. § 27-7-5-4(a)

Uninsured Motor Vehicles

An uninsured motor vehicle is one without liability insurance or not otherwise compliant with the financial responsibility requirements of such laws of this or another state or where the insurer is unable to make payments to the limit of liability due to insolvency.

I.C. § 27-7-5-4(b)

Underinsured Motor Vehicles

An underinsured motor vehicle is one where the limits of coverage available for payment to the insured under all bodily injury liability policies covering persons liable to the insured are less than the limits of the insured's underinsured motorist coverage.

I.C. § 27-7-6-2

Definitions

This statute contains the definitions for “automobile insurance policy”, and “automobile liability coverage”.

2. Negligence, Other Torts and Contribution

I.C. § 7.1-5-10-15.5

Civil Liability for Furnishing Alcohol

A person who furnishes alcohol is not liable for civil action for damages caused by the intoxicated person, unless they actually knew the person was visibly intoxicated, and the intoxication of the person was the proximate cause of the injury or damage.

If a person, who is 21, suffers an injury or death, caused by voluntary intoxication, the person, the person's heirs, dependents or representative may not make a claim against the person who furnished the alcohol.

I.C. § 12-15-29-4.5

Medicaid Claim

Insurer must accept a Medicaid claim for a Medicaid recipient for three (3) years from the date of service. An insurer cannot deny a Medicaid claim solely based on the date of submission, type or format of the claim, method of submission or failure to provide proper documentation.

Insurer cannot deny a Medicaid claim solely due to lack of prior authorization. Insurer will conduct the prior authorization retrospectively when prior authorization is necessary. Insurer must adjudicate such claim as if it received prior authorization.

I.C. § 14-22-10-2.5

Entry Onto Premises of Another

A person, who enters a premise, without permission or monetary compensation, for the purposes of hunting or fishing, does not have an assurance that the premise is safe.

The owner of a premise does not assume responsibility or incur liability for damage or injury caused by others persons using the premises.

I.C. § 22-3-10-1

Ban on Employer Waiver of Liability

Any contracts between an employer and an employee, or any contracts between an employee and any third-party, which purport to release the employer or third-party from any liability for damages arising out of the negligence of the employer or third-party are against public policy and declared null and void.

I.C. § 34-18-8-4

Medical Malpractice – Prerequisite to Commencement of Action

Prior to commencing a medical malpractice action in Indiana, the claimant's proposed complaint must be presented to a "medical review panel" for review, and the panel must provide an opinion regarding whether or not the evidence supports the alleged conclusions.

I.C. § 34-20-1-1

Products Liability Actions

The article governs all actions that are brought by a user or consumer against a manufacturer or seller for physical harm caused by a product regardless of the substantive legal theory or theories upon which the action is brought.

I.C. § 34-20-2-1

Product Liability

Liability exists for an unreasonably dangerous or defective product if the seller should reasonably foresee the consumer or class of persons being exposed to the harm caused by the defective condition, the seller is engaged in the business of selling the product and the product reaches the user or consumer without substantial alteration.

I.C. § 34-20-2-2

Product Liability

An action can be maintained even though reasonable care was used in the manufacture and preparation of the product and there is no privity of contract. However, reasonable care is a defense to design defect claims and those for failure to provide adequate warnings.

I.C. § 34-20-2-3

Strict Product Liability

An action for strict product liability for an unreasonably dangerous defective condition may only be brought against the manufacturer.

I.C. § 34-20-2-4

Product Manufacturers

If a court cannot gain jurisdiction over a manufacturer, then the manufacturer's principal distributor or seller over whom the court can gain jurisdiction will be deemed the manufacturer of the product.

I.C. § 34-20-3-1

Product Liability

A product liability action in negligence or strict liability must be commenced within two (2) years from the cause of action or within ten (10) years after the delivery to the initial user or customer. If the cause of action happens after eight (8) years but before ten (10) years of the date of delivery, the action may be commenced within two (2) years after the cause of action.

I.C. § 34-20-9-1

Indemnity in Product Liability Actions

A party held liable may seek indemnity from other persons whose actual fault caused the product to be defective.

I.C. § 34-23-1-1

Wrongful Death

Requires an action in wrongful death to be maintained by the personal representative of the decedent and to have been able to have been prosecuted by the decedent had the decedent lived.

I.C. § 34-23-1-2(d)

Limitation of Certain Wrongful Death Damages

The type of damages in subsection (c)(3)(A) (reasonable medical, hospital, funeral and burial expenses) are limited to \$300,000.00.

I.C. § 34-31-4-1

Parental Liability

A parent is liable for no more than \$5,000.00 in actual damages from damage caused by their child, if the parent has custody and the child is living with the parent.

I.C. § 34-44-1-3

Payments of Awards

Proof of payments may be considered by trier of fact for determining the amount of any award and for any court review of awards considered excessive.

I.C. § 34-51-2-2

Comparative Fault of Governmental Subdivisions

Contributory negligence remains a complete defense to claims under the Tort Claims Act.

I.C. § 34-51-2-5

Comparative Fault Set-Off

Contributory fault of a claimant acts to proportionately reduce the total damages for an injury by the claimant's contributory fault.

I.C. § 34-51-2-6

Contributory Negligence as Complete Defense

Contributory negligence is a complete defense if a claimant's contributory fault is greater than the fault of all other persons whose fault proximately contributed to the claimant's damages.

I.C. § 34-51-2-10

Intentional Torts

A plaintiff may recover one-hundred percent of the compensatory damages in a civil action for an intentional tort from a defendant who was convicted after a prosecution based on the same evidence.

I.C. § 34-51-2-12

Contribution and Indemnity

In an action under this chapter, there is no right of contribution among tortfeasors. The right of indemnity is unaffected by this section.

I.C. § 34-51-2-14

Nonparty Defense

In an action based on fault, a defendant may assert that the damages of the claimant were caused in full or in part by a nonparty.

I.C. § 34-51-2-15

Nonparty Defense

The burden of proving a nonparty defense is upon the defendant who must affirmatively plead the defense.

I.C. § 34-51-2-16

Nonparty Defense

A nonparty defense must be pled if known. Nonparty defenses which become known after the filing of the answer must be raised with reasonable promptness. If the summons and complaint were served more than one hundred fifty (150) days prior to the expiration of the claimant's statute of limitations, nonparty defenses must be pled no later than forty-five (45) days prior to

the expiration of that limitation of action; however, the trial court may alter these time limits to allow defendants a reasonable opportunity to discover the existence of a nonparty defense and allow the claimant a reasonable opportunity to add the nonparty as an additional defendant prior to the expiration of the period of limitations applicable to the claim.

I.C. § 34-51-3-2

Punitive Damages – Clear and Convincing Evidence

Any claim for punitive damages must be established by clear and convincing evidence to support an award.

I.C. § 34-51-3-4

Punitive Damages – Maximum Award

Any punitive damage award may not be more than the greater of:

- (1) Three times the amount of compensatory damages; or
- (2) Fifty Thousand Dollars (\$50,000.00).

I.C. § 34-51-3-5

Punitive Damages – Mandatory Reduction

If a trier of fact awards punitive damages that exceed the maximum allowable award, the court shall reduce the punitive damage award to an amount no more than the greater of:

- (1) Three times the amount of compensatory damages; or
- (2) Fifty Thousand Dollars (\$50,000.00).

3. Subrogation

I.C. § 27-7-5-6(a)

Subrogation for UM/UIM Payments

Provides that payment of UM/UIM coverage for damages operates to subrogate the insurer to any cause of action in tort which payee may have.

I.C. § 27-7-5-6(b)

Exception to the Right of Subrogation for UIM Payments

The insurer providing underinsured motorist coverage does not have the right of subrogation if it is informed of a bona fide offer of settlement which includes a certification of the liability coverage limits of the underinsured motorist and the insurer fails to advance payment in at least the amount of the offer within thirty (30) days.

I.C. § 34-51-2-19

Lien Reduction

Subrogation claims or other liens or claims arising out of the payment of medical expenses or other benefits as the result of personal injuries or death shall be diminished by the claimant's comparative fault or the un-collectability of the full value of the claim resulting from limited liability insurance or any other cause in the same proportion as the claimant's recovery is

reduced. The lien or claim shall also bear a *pro rata* share of the claimant's attorney fees and litigation expenses.

4. Insurance Fraud

I.C. § 27-2-13-2

Release of Information by Insurer

Insurer must furnish policy information relevant to fire loss, history of claims of claimant, and materials relating to fire investigation, if requested by an authorized agency investigating a fire loss.

I.C. § 27-2-13-3

Arson Reporting

When an insurer has reason to believe a fire loss in which it has an interest is caused by a means that was not accidental, then the company shall notify an authorized agency in writing and provide that agency with all materials developed from the insurer's investigation of the fire loss. The insurer shall also provide the office of the State Fire Marshal a copy of any information provided under this section.

I.C. § 27-2-13-4

Arson Reporting

When an authorized agency receives information under this chapter, it may release or provide the same information to any other authorized agency to further its investigation. In addition, an insurer who provides information under this chapter has the reciprocal right to request and receive relevant information from that agency. Finally, an insurer or authorized agency, who releases or provides evidence or information under this chapter, is immune from any civil or criminal liability for providing the evidence or information.

I.C. § 27-2-13-5

Arson Reporting

When an authorized agency is investigating a fire that it believes to have been caused by arson it may, in writing, order an insurer to withhold payment of any policy proceeds on the damaged or destroyed property for up to thirty (30) days from the date of the order. The insurer may not make a payment during that time, except as follows:

- (1) Emergency living expenses;
- (2) Emergency action necessary to secure the premises;
- (3) To prevent further damage to the premises; or
- (4) To a mortgagee who is not the target of the investigation of the authorized agency.

I.C. § 27-2-14-2

Vehicle Theft Reporting

If an insurer has reason to believe that a vehicle theft claim made by an insured is fraudulent, the insurer shall notify, in writing, an authorized agency of the suspected fraudulent claim and provide the agency with all materials developed from the insurer's investigation.

I.C. § 27-2-14-3

Vehicle Theft Reporting

An authorized agency investigating a vehicle theft may, in writing, require an insurer investigating the loss to release any and all relevant information or evidence considered important to the authorized agency, including:

- (1) Pertinent policy information (including a policy application);
- (2) Policy premium payment records;
- (3) History of prior claims made by the insured; and
- (4) Material relating to the investigation, including:
 - a) Statements;
 - b) Proofs of Loss; and/or
 - c) Other relevant evidence.

I.C. § 27-2-14-4

Vehicle Theft Reporting

An authorized agency provided with information under this chapter may release or provide the same information to any other authorized agency to further its investigation. In addition, an insurer who provides information under this section has the reciprocal right to request and receive relevant information from that agency. When requested, the agency shall provide the requested information within a reasonable time, not exceeding thirty (30) days. Finally, an insurer or authorized agency that releases or provides evidence or other information under this chapter is immune from civil or criminal liability for providing that information.

I.C. § 27-2-16-3

Claim Forms

All preprinted claim forms required by an insurer as a condition of payment of a claim must contain a statement which clearly states the following: *“A person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.”*

I.C. § 27-2-19-7

Immunity for Exchange of Information

An insurer, attorney, or investigative agency that receives and provides information pursuant to the requirements of the Indiana Code in good faith is immune from liability arising from the act of receiving, or the act of providing the information.

I.C. § 36-8-17-7

Fire Investigation

A fire department must investigate and determine the cause of fire in their territory. If the fire chief believes a crime was committed, he must notify the division and submit a report. The report must include: (1) a statement of facts; (2) the extent of damage; (3) the amount of insurance; and (4) other information required in the commission’s rules. To carry out this section, the fire department may: (1) enter and inspect property; (2) cooperate with prosecuting attorney;

(3) subpoena witnesses and documents; (4) give oaths; (5) take depositions and conduct hearings; and (6) separate witnesses and regulate the course of proceedings.

5. Miscellaneous Statutes

I.C. § 22-3-2-6

Workers' Compensation – Exclusive Remedy

The Indiana Workers' Compensation Administration provides the exclusive rights and remedies granted to an employee by account of personal injury or death, by accident, while that employee is within the course and scope of his employment.

I.C. § 25-10-1-15

Admissibility of Chiropractor Testimony

A chiropractor's testimony relating to records or reports of a licensed medical physician may be admissible as evidence at trial if:

- (1) The chiropractor is properly qualified as an expert; and
- (2) The court is satisfied the information which the chiropractor testifies about is of the type reasonably relied on by other chiropractors.

I.C. § 27-4-1-4.5

Unfair Claim Settlement Practices

The statute sets forth certain actions/inactions which may constitute unfair claim settlement practices under Indiana law.

I.C. § 34-14-1-1

Declaratory Judgment

A court may declare rights, status, and other legal relations whether or not further relief is or could be claimed.

I.C. § 34-14-1-2

Declaratory Judgment

A person interested under a deed, will, written contract, or other writings or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have questions of construction or validity determined or obtain a declaration of rights, status, or legal relations thereunder.

I.C. § 34-50-1-4

Qualified Settlement Offer

This is essentially a codification of the Trial Rule 68 Offer of Judgment. When a qualified settlement offer is made pursuant to this statute, and not accepted, then the party rejecting the offer must ultimately obtain a more favorable judgment. If the rejecting party fails to obtain a more favorable judgment, the offering party is entitled to attorney's fees, costs, and expenses in an amount not to exceed \$1,000.00. To be valid, a qualified settlement offer must:

- (1) Be in writing;

- (2) Be signed by the offeror or the offeror's attorney;
- (3) Be designated on its face as a "qualified settlement offer;"
- (4) Be delivered to each recipient or the recipient's attorney by:
 - a) Registered or certified mail; or
 - b) Any other method that verifies the date of receipt; and
- (5) Set forth the complete terms of the settlement proposal in sufficient detail to allow the recipient to decide whether to accept or reject it;
- (6) Include the name and address of the offeror and the offeror's attorney; and
- (7) Expressly revoke all prior qualified settlement offers made by the offeror to the recipient.

I.C. § 34-51-4-8

Prejudgment Interest

If a court awards prejudgment interest, the court must determine the period during which prejudgment interest accrues, which may not exceed forty-eight (48) months. Generally, prejudgment interest will begin to accrue on the latest of the following dates:

- (1) Fifteen months after the cause of action accrued; and
- (2) Six months after a medical malpractice claim is filed (if, I.C. § 34-18-8 and I.C. § 34-19-9 do not apply) or one hundred eighty (180) days after a medical review panel is formed to review a medical malpractice complaint.
- (3) In all cases, however, the court shall exclude any period of delay that the court determines is caused by the party requesting prejudgment interest.

