

# SENATE BILL No. 309

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-7-12.

**Synopsis:** Insurance coverage for environmental problems. Provides that an insurance policy issued or renewed after June 30, 1998, may avoid providing environmental coverage if the policy contains certain language excluding from coverage: (1) bodily injury or property damage arising out of the discharge of pollutants; and (2) losses, costs, and expenses arising out of the monitoring, clean up, or response to pollutants, or claims of governmental authorities for damages because of monitoring or clean up of pollutants. Provides that pollutant as the term is used in an insurance policy includes any substance under  
(Continued next page)

**Effective:** July 1, 1998.

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January 8, 1998, read first time and referred to Committee on Insurance and Interstate Cooperation.

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Digest Continued

circumstances that would render the substance subject to state or federal law. Requires the department of insurance to issue a bulletin that contains the environmental exclusion language. Requires that the bulletin direct affected insurance companies to issue a short, concise statement declaring that policies containing the environmental exclusion language do not provide environmental coverage.

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Introduced

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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## SENATE BILL No. 309

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 27-7-12 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]:

4 **Chapter 12. Environmental Coverage**

5 **Sec. 1. (a) The public policy of the state requires that:**

6 **(1) consumers be able to determine with reasonable certainty**  
7 **the extent of coverage provided by the insurance contracts**  
8 **they purchase so that they may adequately protect**  
9 **themselves from loss and avoid paying for unneeded and**  
10 **unwanted coverage;**

11 **(2) providers of insurance be able to determine with**  
12 **reasonable certainty the extent of coverage provided by the**  
13 **insurance contracts they sell so that they may set and charge**  
14 **premiums that are neither excessive nor inadequate for the**  
15 **risk actually assumed; and**



1           (3) the economic climate of the state be materially enhanced  
2           by promoting the ready availability of reasonably priced  
3           insurance in a stable and predictable market.

4           (b) It is the purpose of this chapter to promote this public  
5           policy by providing a clear and unambiguous means by which  
6           insurance contracts may exclude environmental coverage. This  
7           chapter is not intended to provide the only means by which  
8           insurance contracts may exclude or otherwise not provide  
9           environmental coverage.

10          Sec. 2. This chapter does not apply to bodily injury or  
11          property damage arising out of heat, smoke, or fumes from a  
12          hostile fire otherwise covered under an insurance policy.

13          Sec. 3. As used in this chapter, "environmental coverage"  
14          means insurance coverage for:

15           (1) bodily injury that:

16               (A) results from an actual, an alleged, or a threatened  
17               inhalation, ingestion, or absorption of any substance;  
18               and

19               (B) arises under circumstances that render the  
20               substance subject to regulation under state or federal  
21               environmental protections laws, IC 13 or 42 U.S.C., as  
22               amended;

23           (2) any other injury, damage, claim, clean up, loss, cost, or  
24           expense that:

25               (A) results from an actual, an alleged, or a threatened  
26               discharge, dispersal, seepage, migration, release, or  
27               escape of any substance; and

28               (B) arises under circumstances that render the  
29               substance subject to regulation under state or federal  
30               environmental protections laws, IC 13 or 42 U.S.C., as  
31               amended; or

32           (3) coverage described in both subdivisions (1) and (2).

33          Sec. 4. (a) An insurance policy issued or renewed after June 30,  
34          1998, shall not provide, or be interpreted to provide,  
35          environmental coverage if the policy contains language that can be  
36          read to exclude or limit coverage for bodily injury, property  
37          damage, or personal injury arising out of the actual, alleged, or  
38          threatened discharge, dispersal, seepage, migration, release, or  
39          escape of pollutants.

40          (b) Language described in subsection (a) must appear under  
41          a heading entitled "Exclusions" and must include exclusionary  
42          language substantially similar to the following language:

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1 (1) This insurance policy does not apply to "bodily injury"  
 2 or "property damage" arising out of the actual, alleged, or  
 3 threatened discharge, dispersal, seepage, migration, release,  
 4 or escape of pollutants:

5 (A) at or from any premises, site, or location that is or  
 6 was at any time owned or occupied by, or rented or  
 7 loaned to, any insured;

8 (B) at or from any premises, site, or location that is or  
 9 was at any time used by or for any insured or others for  
 10 the handling, storage, disposal, processing, or treatment  
 11 of waste;

12 (C) which are or were at any time transported, handled,  
 13 stored, treated, disposed of, or processed as waste by or  
 14 for any insured or any person or organization for whom  
 15 the named insured may be legally responsible; or

16 (D) at or from any premises, site, or location on which  
 17 any insured or any contractors or subcontractors  
 18 working directly or indirectly on any insured's behalf  
 19 are performing operations:

20 (i) if the pollutants are brought on or to the  
 21 premises, site, or locations in connection with such  
 22 operations by the insured, contractor, or  
 23 subcontractor; or

24 (ii) if the operations are to test for, monitor, clean  
 25 up, remove, contain, treat, detoxify, neutralize, or in  
 26 any way respond to or assess the effects of  
 27 pollutants.

28 (2) Subdivision (1)(A) and (1)(D)(i) do not apply to "bodily  
 29 injury" or "property damage" arising out of heat, smoke, or  
 30 fumes from a hostile fire.

31 (3) As used in this exclusion, a hostile fire means a fire which  
 32 becomes uncontrollable or breaks out from where it was  
 33 intended to be.

34 (4) This insurance policy does not apply to any loss, cost, or  
 35 expense arising out of any:

36 (A) request, demand, or order that any insured or others  
 37 test for, monitor, clean up, remove, contain, treat,  
 38 detoxify, or neutralize, or in any way respond to or  
 39 assess the effects of pollutants; or

40 (B) claim or suit by or on behalf of a governmental  
 41 authority for damages because of testing for,  
 42 monitoring, cleaning up, removing, containing, treating,

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1                   detoxifying, or neutralizing, or in any way responding to  
2                   or assessing the effects of pollutants.

3                   (5) "Pollutants" means any solid, liquid, gaseous, or thermal  
4                   irritant or contaminant.

5                   Sec. 5. The term "pollutant" or "pollutants", when used or  
6                   defined in an insurance policy, includes any substance under  
7                   circumstances that would render the substance subject to  
8                   regulation under state or federal environmental protection laws,  
9                   IC 13 or 42 U.S.C., as amended.

10                  Sec. 6. If a provision of this chapter or its application to a  
11                  person or circumstance is held invalid, the invalidity does not affect  
12                  other provisions or applications of this chapter, and to this end the  
13                  provisions of this chapter are severable.

14                  SECTION 2. [EFFECTIVE JULY 1, 1998] (a) IC 27-7-12, as  
15                  added by this act, applies to all insurance policies issued or  
16                  renewed in Indiana after June 30, 1998, but applies only to any:

17                   (1) occurrence; or

18                   (2) discharge, dispersal, seepage, migration, release, or  
19                   escape of a pollutant;

20                  that takes place after June 30, 1998.

21                  (b) IC 27-7-12, as added by this act, does not apply to any:

22                   (1) occurrence; or

23                   (2) discharge, dispersal, seepage, migration, release, or  
24                   escape of a pollutant;

25                  that takes place before July 1, 1998.

26                  (c) This act does not affect insurance in place before July 1,  
27                  1998.

28                  (d) IC 27-7-12-4 and IC 27-7-12-5, both as added by this act,  
29                  do not preclude an insurer from offering and providing  
30                  environmental coverage (as defined in IC 27-7-12-3, as added by  
31                  this act).

32                  (e) IC 27-7-12, as added by this act, does not apply to a part of  
33                  a policy that provides coverage for an owner occupied residential  
34                  property or structure of not more than four (4) dwellings or units.

35                  (f) The department of insurance shall issue a bulletin  
36                  applicable to all insurance policies issued or renewed after July 1,  
37                  1998, that contain the environmental exclusions referred to in  
38                  IC 27-7-12, as added by this act. The bulletin must direct the  
39                  affected companies to issue a short, concise statement declaring  
40                  that those policies do not provide environmental coverage.

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