

January 30, 1998

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## SENATE BILL No. 309

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DIGEST OF SB 309 (Updated January 29, 1998 12:05 pm - DI 97)

**Citations Affected:** IC 27-7; noncode.

**Synopsis:** Insurance coverage for environmental problems. Provides that an insurance policy issued or renewed after September 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. Requires the department of insurance to issue a bulletin that contains the environmental exclusion  
(Continued next page)

**Effective:** July 1, 1998.

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### Ford, Simpson

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January 8, 1998, read first time and referred to Committee on Insurance and Interstate Cooperation.  
January 29, 1998, amended, reported favorably — Do Pass.

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Digest Continued

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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SB 309—LS 6998/DI 78



January 30, 1998

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 OCTOBER 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

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- 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.
- 7           Sec. 2. (a) This chapter applies to all insurance policies issued  
8           or renewed in Indiana after September 30, 1998, but applies only  
9           to any:
- 10           (1) occurrence; or  
11           (2) discharge, dispersal, seepage, migration, release, or  
12           escape of a pollutant;  
13           that takes place after September 30, 1998.
- 14           (b) This chapter does not apply to any:
- 15           (1) occurrence; or  
16           (2) discharge, dispersal, seepage, migration, release, or  
17           escape of a pollutant;  
18           that takes place before October 1, 1998.
- 19           (c) This chapter does not affect insurance in place before  
20           October 1, 1998.
- 21           (d) This chapter does not apply to a part of a policy that  
22           provides coverage for an owner occupied residential property or  
23           structure of not more than four (4) dwellings or units.
- 24           Sec. 3. As used in this chapter, "environmental coverage"  
25           means insurance coverage for an injury, a damage, a clean up, a  
26           loss, a cost, or an expense arising from an actual, an alleged, or a  
27           threatened discharge, dispersal, seepage, migration, release,  
28           escape, inhalation, ingestion, or absorption of a pollutant into or  
29           upon land, the atmosphere, or any watercourse or body of water,  
30           including groundwater.
- 31           Sec. 4. For purposes of this chapter, "hazardous material"  
32           means any of the following:
- 33           (1) A hazardous chemical (as defined in and not listed as an  
34           exception to 42 U.S.C. 11021(e), as in effect on January 1,  
35           1990).
- 36           (2) A hazardous waste.
- 37           (3) A hazardous substance (as defined in 42 U.S.C. 9601(14),  
38           as in effect on January 1, 1990).
- 39           (4) A substance that is on the list of extremely hazardous  
40           substances published by the Administrator of the United  
41           States Environmental Protection Agency under 42 U.S.C.  
42           11002(a)(2).

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- 1 (5) A material that is identified by the water pollution  
 2 control board as potentially harmful to surface water or  
 3 groundwater if accidentally released from a storage or  
 4 handling facility.
- 5 (6) A material or waste that has been determined to be  
 6 hazardous or potentially hazardous to human health, to  
 7 property, or to the environment by the United States:
- 8 (A) Environmental Protection Agency;  
 9 (B) Nuclear Regulatory Commission;  
 10 (C) Department of Transportation; or  
 11 (D) Occupational Safety and Health Administration.
- 12 (7) The hazardous materials identified in 49 CFR 172.101.
- 13 **Sec. 5.** For purposes of this chapter, "petroleum" includes  
 14 petroleum and crude oil, or any part of petroleum or crude oil that  
 15 is liquid at standard conditions of temperature and pressure (sixty  
 16 (60) degrees Fahrenheit and fourteen and seven-tenths (14.7)  
 17 pounds per square inch absolute).
- 18 **Sec. 6.** For purposes of this chapter, "pollutant" means any of  
 19 the following:
- 20 (1) A hazardous material as defined in section 4 of this  
 21 chapter.
- 22 (2) Petroleum, as defined in section 5 of this chapter.
- 23 (3) A regulated substance defined in section 7 of this chapter.
- 24 **Sec. 7. (a)** For purposes of this chapter, "regulated substance"  
 25 means any of the following:
- 26 (1) A hazardous substance defined in Section 101 of  
 27 CERCLA (42 U.S.C. 9601).
- 28 (2) Any substance that the solid waste management board  
 29 determines to be hazardous under environmental  
 30 management laws.
- 31 (3) Petroleum.
- 32 (4) Any other substance designated by rules adopted by the  
 33 solid waste management board under IC 13-23-1-2.
- 34 (b) The term does not include any substance regulated as a  
 35 hazardous waste under:
- 36 (1) Subtitle C of the federal Solid Waste Disposal Act, as  
 37 amended (42 U.S.C. 6921 through 6939(a)); or  
 38 (2) IC 13-22-2-3.
- 39 **Sec. 8.** An insurance policy issued or renewed after September  
 40 30, 1998, shall not provide, or be interpreted to provide,  
 41 environmental coverage if the policy contains the following  
 42 language or language filed in accordance with IC 27-1-22 that the

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1 insurance commissioner does not find to be less favorable to the  
2 policyholder than the following language:

3 "Exclusions. This insurance does not apply to:

4 (1) Bodily injury or property damage arising out of the  
5 actual, alleged, or threatened discharge, dispersal, seepage,  
6 migration, release, or escape of pollutants:

7 (a) at or from any premises, site, or location that is or  
8 was at any time owned or occupied by, or rented or  
9 loaned to, any insured;

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

14 (c) that are or were at any time transported, handled,  
15 stored, treated, disposed of, or processed as waste by or  
16 for any insured or any person or organization for whom  
17 you may be legally responsible; or

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

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

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

30 Subparagraphs (a) and (d)(i) do not apply to bodily injury or  
31 property damage arising out of heat, smoke, or fumes from  
32 a hostile fire.

33 As used in this exclusion, a hostile fire means one that  
34 becomes uncontrollable or breaks out from where it was  
35 intended to be.

36 (2) Any loss, cost, or expense arising out of any:

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

41 (b) claim or suit by or on behalf of a governmental  
42 authority for damages because of testing for,

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monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of pollutants."

**Sec. 9. Section 8 of this chapter does not preclude an insurer from offering and providing environmental coverage (as defined in section 3 of this chapter).**

**SECTION 2. [EFFECTIVE UPON PASSAGE] (a) The department of insurance shall issue a bulletin applicable to all insurance policies issued or renewed after October 1, 1998, that contain the environmental exclusions referred to in IC 27-7-12, as added by this act. The bulletin must direct the affected companies to issue a short, concise statement declaring that those policies do not provide environmental coverage.**

**(b) This SECTION expires January 1, 2000.**

**SECTION 3. An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Simpson be added as second author of Senate Bill 309.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Interstate Cooperation, to which was referred Senate Bill 309, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to Senate Bill 309 as introduced.)

WORMAN, Chairperson

Committee Vote: Yeas 6, Nays 0.

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