

# COMMITTEE REPORT

---

**MR. PRESIDENT:**

**The Senate Committee on Insurance and Interstate Cooperation, to which was referred Senate Bill No. 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:**

- 1 Delete everything after the enacting clause and insert the  
2 following:  
3 SECTION 1. IC 27-7-12 IS ADDED TO THE INDIANA CODE  
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
5 OCTOBER 1, 1998]:  
6 **Chapter 12. Environmental Coverage**  
7 **Sec. 1. (a) The public policy of the state requires that:**  
8 (1) consumers be able to determine with reasonable certainty  
9 the extent of coverage provided by the insurance contracts  
10 they purchase so that they may adequately protect  
11 themselves from loss and avoid paying for unneeded and  
12 unwanted coverage;  
13 (2) providers of insurance be able to determine with  
14 reasonable certainty the extent of coverage provided by the  
15 insurance contracts they sell so that they may set and charge  
16 premiums that are neither excessive nor inadequate for the  
17 risk actually assumed; and  
18 (3) the economic climate of the state be materially enhanced

1           by promoting the ready availability of reasonably priced  
2           insurance in a stable and predictable market.

3           (b) It is the purpose of this chapter to promote this public  
4           policy by providing a clear and unambiguous means by which  
5           insurance contracts may exclude environmental coverage.

6           Sec. 2. (a) This chapter applies to all insurance policies issued  
7           or renewed in Indiana after September 30, 1998, but applies only  
8           to any:

- 9           (1) occurrence; or  
10          (2) discharge, dispersal, seepage, migration, release, or  
11          escape of a pollutant;

12          that takes place after September 30, 1998.

13          (b) This chapter does not apply to any:

- 14          (1) occurrence; or  
15          (2) discharge, dispersal, seepage, migration, release, or  
16          escape of a pollutant;

17          that takes place before October 1, 1998.

18          (c) This chapter does not affect insurance in place before  
19          October 1, 1998.

20          (d) This chapter does not apply to a part of a policy that  
21          provides coverage for an owner occupied residential property or  
22          structure of not more than four (4) dwellings or units.

23          Sec. 3. As used in this chapter, "environmental coverage"  
24          means insurance coverage for an injury, a damage, a clean up, a  
25          loss, a cost, or an expense arising from an actual, an alleged, or a  
26          threatened discharge, dispersal, seepage, migration, release,  
27          escape, inhalation, ingestion, or absorption of a pollutant into or  
28          upon land, the atmosphere, or any watercourse or body of water,  
29          including groundwater.

30          Sec. 4. For purposes of this chapter, "hazardous material"  
31          means any of the following:

32          (1) A hazardous chemical (as defined in and not listed as an  
33          exception to 42 U.S.C. 11021(e), as in effect on January 1,  
34          1990).

35          (2) A hazardous waste.

36          (3) A hazardous substance (as defined in 42 U.S.C. 9601(14),  
37          as in effect on January 1, 1990).

38          (4) A substance that is on the list of extremely hazardous

1 substances published by the Administrator of the United  
 2 States Environmental Protection Agency under 42 U.S.C.  
 3 11002(a)(2).

4 (5) A material that is identified by the water pollution  
 5 control board as potentially harmful to surface water or  
 6 groundwater if accidentally released from a storage or  
 7 handling facility.

8 (6) A material or waste that has been determined to be  
 9 hazardous or potentially hazardous to human health, to  
 10 property, or to the environment by the United States:

11 (A) Environmental Protection Agency;

12 (B) Nuclear Regulatory Commission;

13 (C) Department of Transportation; or

14 (D) Occupational Safety and Health Administration.

15 (7) The hazardous materials identified in 49 CFR 172.101.

16 Sec. 5. For purposes of this chapter, "petroleum" includes  
 17 petroleum and crude oil, or any part of petroleum or crude oil that  
 18 is liquid at standard conditions of temperature and pressure (sixty  
 19 (60) degrees Fahrenheit and fourteen and seven-tenths (14.7)  
 20 pounds per square inch absolute).

21 Sec. 6. For purposes of this chapter, "pollutant" means any of  
 22 the following:

23 (1) A hazardous material as defined in section 4 of this  
 24 chapter.

25 (2) Petroleum, as defined in section 5 of this chapter.

26 (3) A regulated substance defined in section 7 of this chapter.

27 Sec. 7. (a) For purposes of this chapter, "regulated substance"  
 28 means any of the following:

29 (1) A hazardous substance defined in Section 101 of  
 30 CERCLA (42 U.S.C. 9601).

31 (2) Any substance that the solid waste management board  
 32 determines to be hazardous under environmental  
 33 management laws.

34 (3) Petroleum.

35 (4) Any other substance designated by rules adopted by the  
 36 solid waste management board under IC 13-23-1-2.

37 (b) The term does not include any substance regulated as a  
 38 hazardous waste under:

- 1           **(1) Subtitle C of the federal Solid Waste Disposal Act, as**
- 2           **amended (42 U.S.C. 6921 through 6939(a)); or**
- 3           **(2) IC 13-22-2-3.**

4           **Sec. 8. An insurance policy issued or renewed after September**  
 5           **30, 1998, shall not provide, or be interpreted to provide,**  
 6           **environmental coverage if the policy contains the following**  
 7           **language or language filed in accordance with IC 27-1-22 that the**  
 8           **insurance commissioner does not find to be less favorable to the**  
 9           **policyholder than the following language:**

10           **"Exclusions. This insurance does not apply to:**

11           **(1) Bodily injury or property damage arising out of the**  
 12           **actual, alleged, or threatened discharge, dispersal, seepage,**  
 13           **migration, release, or escape of pollutants:**

14                   **(a) at or from any premises, site, or location that is or**  
 15                   **was at any time owned or occupied by, or rented or**  
 16                   **loaned to, any insured;**

17                   **(b) at or from any premises, site, or location that is or**  
 18                   **was at any time used by or for any insured or others for**  
 19                   **the handling, storage, disposal, processing, or treatment**  
 20                   **of waste;**

21                   **(c) that are or were at any time transported, handled,**  
 22                   **stored, treated, disposed of, or processed as waste by or**  
 23                   **for any insured or any person or organization for whom**  
 24                   **you may be legally responsible; or**

25                   **(d) at or from any premises, site, or location on which**  
 26                   **any insured or any contractors or subcontractors**  
 27                   **working directly or indirectly on any insured's behalf**  
 28                   **are performing operations:**

29                           **(i) if the pollutants are brought on or to the**  
 30                           **premises, site, or location in connection with such**  
 31                           **operations by the insured, contractor, or**  
 32                           **subcontractor; or**

33                           **(ii) if the operations are to test for, monitor, clean**  
 34                           **up, remove, contain, treat, detoxify or neutralize, or**  
 35                           **in any way respond to or assess the effects of**  
 36                           **pollutants.**

37           **Subparagraphs (a) and (d)(i) do not apply to bodily injury or**  
 38           **property damage arising out of heat, smoke, or fumes from**

- 1           **a hostile fire.**  
 2           **As used in this exclusion, a hostile fire means one that**  
 3           **becomes uncontrollable or breaks out from where it was**  
 4           **intended to be.**  
 5           **(2) Any loss, cost, or expense arising out of any:**  
 6                   **(a) request, demand, or order that any insured or others**  
 7                   **test for, monitor, clean up, remove, contain, treat,**  
 8                   **detoxify, or neutralize, or in any way respond to, or**  
 9                   **assess the effects of pollutants; or**  
 10                   **(b) claim or suit by or on behalf of a governmental**  
 11                   **authority for damages because of testing for,**  
 12                   **monitoring, cleaning up, removing, containing, treating,**  
 13                   **detoxifying, or neutralizing, or in any way responding to**  
 14                   **or assessing the effects of pollutants."**  
 15           **Sec. 9. Section 8 of this chapter does not preclude an insurer**  
 16           **from offering and providing environmental coverage (as defined in**  
 17           **section 3 of this chapter).**  
 18           **SECTION 2. [EFFECTIVE UPON PASSAGE] (a) The**  
 19           **department of insurance shall issue a bulletin applicable to all**  
 20           **insurance policies issued or renewed after October 1, 1998, that**  
 21           **contain the environmental exclusions referred to in IC 27-7-12, as**  
 22           **added by this act. The bulletin must direct the affected companies**  
 23           **to issue a short, concise statement declaring that those policies do**  
 24           **not provide environmental coverage.**  
 25                   **(b) This SECTION expires January 1, 2000.**  
 26           **SECTION 3. An emergency is declared for this act.**  
               (Reference is to SB 309 as introduced.)

**and when so amended that said Bill do pass.**

Committee Vote: Yeas 6, Nays 0.

---

**Senator Worman, Chairperson**