

# SENATE BILL No. 559

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-1-22-4; IC 27-4-5-2.

**Synopsis:** Rate filings for industrial insureds. Exempts insurers of certain industrial insureds from filing rate information with the commissioner of insurance.

**Effective:** July 1, 1999.

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**Clark**

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January 20, 1999, read first time and referred to Committee on Insurance and Financial Institutions.

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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## SENATE BILL No. 559



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 27-1-22-4 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Every insurer:
- 3 ~~shall file with the commissioner;~~
- 4 (1) except as to inland marine risks which by general custom of
- 5 the business are not written according to manual rates or rating
- 6 plans; **and**
- 7 (2) **except as to risks of industrial insureds (as defined by**
- 8 **IC 27-4-5-2(8));**
- 9 **shall file with the commissioner** every manual of classifications,
- 10 rules, and rates, every rating schedule, every rating plan, and every
- 11 modification of any of the foregoing which it proposes to use.
- 12 (b) Every such filing shall indicate the character and extent of the
- 13 coverage contemplated and shall be accompanied by the information
- 14 upon which the filer supports such filing.
- 15 (c) The information furnished in support of a filing may include:
- 16 (1) the experience and judgment of the insurer or rating
- 17 organization making the filing;



- 1 (2) its interpretation of any statistical data it relies upon;  
 2 (3) the experience of other insurers or rating organizations; or  
 3 (4) any other relevant factors.

4 The commissioner shall have the right to request any additional  
 5 relevant information. A filing and any supporting information shall be  
 6 open to public inspection as soon as stamped "filed" within a  
 7 reasonable time after receipt by the commissioner, and copies may be  
 8 obtained by any person on request and upon payment of a reasonable  
 9 charge therefor.

10 (d) Filings shall become effective upon the date of filing by delivery  
 11 or upon date of mailing by registered mail to the commissioner, or on  
 12 a later date specified in the filing.

13 (e) Specific inland marine rates on risks specially rated, made by a  
 14 rating organization, shall be filed with the commissioner.

15 (f) Any insurer may satisfy its obligation to make any such filings  
 16 by becoming a member of, or a subscriber to, a licensed rating  
 17 organization which makes such filings and by authorizing the  
 18 commissioner to accept such filings on its behalf, provided that nothing  
 19 contained in this chapter shall be construed as requiring any insurer to  
 20 become a member of or a subscriber to any rating organization or as  
 21 requiring any member or subscriber to authorize the commissioner to  
 22 accept such filings on its behalf.

23 (g) Every insurer which is a member of or a subscriber to a rating  
 24 organization shall be deemed to have authorized the commissioner to  
 25 accept on its behalf all filings made by the rating organization which  
 26 are within the scope of its membership or subscribership, provided:

- 27 (1) that any subscriber may withdraw or terminate such  
 28 authorization, either generally or for individual filings, by written  
 29 notice to the commissioner and to the rating organization and may  
 30 then make its own independent filings for any kinds of insurance,  
 31 or subdivisions, or classes of risks, or parts or combinations of  
 32 any of the foregoing, with respect to which it has withdrawn or  
 33 terminated such authorization, or may request the rating  
 34 organization, within its discretion, to make any such filing on an  
 35 agency basis solely on behalf of the requesting subscriber; and  
 36 (2) that any member may proceed in the same manner as a  
 37 subscriber unless the rating organization shall have adopted a  
 38 rule, with the approval of the commissioner:

- 39 (A) requiring a member, before making an independent filing,  
 40 first to request the rating organization to make such filing on  
 41 its behalf and requiring the rating organization, within thirty  
 42 (30) days after receipt of such request, either:

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- 1 (i) to make such filing as a rating organization filing;  
 2 (ii) to make such filing on an agency basis solely on behalf  
 3 of the requesting member; or  
 4 (iii) to decline the request of such member; and  
 5 (B) excluding from membership any insurer which elects to  
 6 make any filing wholly independently of the rating  
 7 organization.

8 (h) Under such rules as he shall adopt, the commissioner may, by  
 9 written order, suspend or modify the requirement of filing as to any  
 10 kinds of insurance, or subdivision, or classes of risk, or parts or  
 11 combinations of any of the foregoing, the rates for which can not  
 12 practicably be filed before they are used. Such orders and rules shall be  
 13 made known to insurers and rating organizations affected thereby. The  
 14 commissioner may make such examination as he may deem advisable  
 15 to ascertain whether any rates affected by such order are excessive,  
 16 inadequate, or unfairly discriminatory.

17 (i) Upon the written application of the insured, stating his reasons  
 18 therefor, filed with the commissioner, a rate in excess of that provided  
 19 by a filing otherwise applicable may be used on any specific risk.

20 (j) Except as to contracts or policies for inland marine risks as to  
 21 which filings are not required, no insurer shall make or issue a policy  
 22 or contract except in accordance with filings which are in effect for that  
 23 insurer or in accordance with the provisions of this chapter. Subject to  
 24 the provisions of section 6 of this chapter, any rates, rating plans, rules,  
 25 classifications, or systems in effect on May 31, 1967, shall be  
 26 continued in effect until withdrawn by the insurer or rating  
 27 organization which filed them.

28 (k) The commissioner shall have the right to make an investigation  
 29 and to examine the pertinent files and records of any insurer, insurance  
 30 agent, or insured in order to ascertain compliance with any filing for  
 31 rate or coverage which is in effect. He shall have the right to set up  
 32 procedures necessary to eliminate noncompliance, whether on an  
 33 individual policy, or because of a system of applying charges or  
 34 discounts which results in failure to comply with such filing.

35 SECTION 2. IC 27-4-5-2 IS AMENDED TO READ AS FOLLOWS  
 36 [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) It is a Class A infraction for  
 37 an insurer to transact insurance business in this state, as set forth in  
 38 subsection (b), without a certificate of authority from the  
 39 commissioner. However, this section does not apply to the following:

- 40 (1) The lawful transaction of surplus lines insurance.  
 41 (2) The lawful transaction of reinsurance by insurers.  
 42 (3) Transactions in this state involving a policy lawfully solicited,



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1 written, and delivered outside of this state covering only subjects  
 2 of insurance not resident, located, or expressly to be performed in  
 3 this state at the time of issuance, and which transactions are  
 4 subsequent to the issuance of such policy.

5 (4) Attorneys acting in the ordinary relation of attorney and client  
 6 in the adjustment of claims or losses.

7 (5) Transactions in this state involving group life and group  
 8 sickness and accident or blanket sickness and accident insurance  
 9 or group annuities where the master policy of such groups was  
 10 lawfully issued and delivered in and pursuant to the laws of a  
 11 state in which the insurer was authorized to do an insurance  
 12 business, to a group organized for purposes other than the  
 13 procurement of insurance, and where the policyholder is  
 14 domiciled or otherwise has a bona fide situs.

15 (6) Transactions in this state relative to a policy issued or to be  
 16 issued outside this state involving insurance on vessels, craft or  
 17 hulls, cargos, marine builder's risk, marine protection and  
 18 indemnity or other risk, including strikes and war risks commonly  
 19 insured under ocean or wet marine forms of policy.

20 (7) Transactions in this state involving life insurance, health  
 21 insurance, or annuities provided to religious or charitable  
 22 institutions organized and operated without profit to any private  
 23 shareholder or individual for the benefit of such institutions and  
 24 individuals engaged in the service of such institutions.

25 (8) Transactions in this state involving contracts of insurance not  
 26 readily obtainable in the ordinary insurance market and issued to  
 27 one (1) or more industrial insureds. For purposes of this section  
 28 **and IC 27-1-22-4**, an "industrial insured" means an insured:

29 (A) who procures the insurance of any risk or risks by use of  
 30 the services of a full-time employee acting as an insurance  
 31 manager or buyer or the services of a regularly retained and  
 32 continuously qualified insurance consultant;

33 (B) whose aggregate annual premium for insurance on all risks  
 34 totals at least twenty-five thousand dollars (\$25,000); and

35 (C) who has at least twenty-five (25) full-time employees.

36 (9) Transactions in Indiana involving the rendering of any service  
 37 by any ambulance service provider and all fees, costs, and  
 38 membership payments charged for the service. To qualify under  
 39 this subdivision, the ambulance service provider:

40 (A) must have its ambulance service program approved by an  
 41 ordinance of the legislative body of the county or city in which  
 42 it operates; and

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(B) may not offer any membership program that includes benefits exceeding one (1) year in duration.

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer constitutes the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all persons engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

(1) The making of or proposing to make, as an insurer, an insurance contract.

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

(3) The taking or receiving of any application for insurance.

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof.

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

(6) Acting as an agent for or otherwise representing or aiding on behalf of another person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or representing or assisting a person or an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subdivision does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of the employer.

(c)(1) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority does not impair the validity of any act or contract of such insurer and does not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority may maintain an action in any court of this

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1 state to enforce any right, claim, or demand arising out of the  
2 transaction of such business until such insurer obtains a certificate of  
3 authority.

4 (2) In the event of failure of any such unauthorized insurer to pay  
5 any claim or loss within the provisions of such insurance contract, any  
6 person who assisted or in any manner aided directly or indirectly in the  
7 procurement of such insurance contract is liable to the insured for the  
8 full amount of the claim or loss in the manner provided by the  
9 insurance contract.

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