



Reprinted  
February 3, 2006

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## SENATE BILL No. 349

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DIGEST OF SB 349 (Updated February 2, 2006 6:05 pm - DI 51)

**Citations Affected:** IC 27-1; IC 27-7.

**Synopsis:** Title insurance. Specifies requirements for the conduct of a title insurance agent or title agency, including licensure, continuing education, placement of title insurance business, record keeping, reporting, and management and use of funds. Establishes the title insurance enforcement fund. Requires the department of insurance to establish a title insurance enforcement unit to enforce title insurance law.

**Effective:** July 1, 2006.

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### Waltz

(HOUSE SPONSOR — BURTON)

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January 10, 2006, read first time and referred to Committee on Insurance and Financial Institutions.

January 30, 2006, amended, reported favorably — Do Pass.

February 1, 2006, read second time, ordered engrossed.

February 2, 2006, engrossed, recommitted to Committee of One, report adopted. Read third time, passed. Yeas 50, nays 0.

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SB 349—LS 6905/DI 97+



Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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## SENATE BILL No. 349

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A BILL FOR AN ACT to amend the Indiana Code concerning insurance and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 27-1-15.6-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) As used in this  
3 section, "insurer" does not include an officer, director, employee,  
4 subsidiary, or affiliate of an insurer.  
5 (b) This chapter does not require an insurer to obtain an insurance  
6 producer license.  
7 (c) The following are not required to be licensed as an insurance  
8 producer:  
9 (1) An officer, director, or employee of an insurer or of an  
10 insurance producer, if the officer, director, or employee does not  
11 receive any commission on policies written or sold to insure risks  
12 that reside, are located, or are to be performed in Indiana, and if:  
13 (A) the officer, director, or employee's activities are executive,  
14 administrative, managerial, clerical, or a combination of these,  
15 and are only indirectly related to the sale, solicitation, or  
16 negotiation of insurance;  
17 (B) the officer, director, or employee's function relates to



1 underwriting, loss control, inspection, or the processing,  
 2 adjusting, investigating, or settling of a claim on a contract of  
 3 insurance; or  
 4 (C) the officer, director, or employee is acting in the capacity  
 5 of a special agent or agency supervisor assisting insurance  
 6 producers and the officer, director, or employee's activities are  
 7 limited to providing technical advice and assistance to  
 8 licensed insurance producers and do not include the sale,  
 9 solicitation, or negotiation of insurance.

10 (2) A person who secures and furnishes information for the  
 11 purpose of:  
 12 (A) group life insurance, group property and casualty  
 13 insurance, group annuities, group or blanket accident and  
 14 sickness insurance;  
 15 (B) enrolling individuals under plans;  
 16 (C) issuing certificates under plans or otherwise assisting in  
 17 administering plans; or  
 18 (D) performing administrative services related to mass  
 19 marketed property and casualty insurance;  
 20 where no commission is paid to the person for the service.

21 (3) A person identified in clauses (A) through (C) who is not in  
 22 any manner compensated, directly or indirectly, by a company  
 23 issuing a contract, to the extent that the person is engaged in the  
 24 administration or operation of a program of employee benefits for  
 25 the employer's or association's employees, or for the employees of  
 26 a subsidiary or affiliate of the employer or association, that  
 27 involves the use of insurance issued by an insurer:  
 28 (A) An employer or association.  
 29 (B) An officer, director, or employee of an employer or  
 30 association.  
 31 (C) The trustees of an employee trust plan.

32 (4) An:  
 33 (A) employee of an insurer; or  
 34 (B) organization employed by insurers;  
 35 that is engaged in the inspection, rating, or classification of risks,  
 36 or in the supervision of the training of insurance producers, and  
 37 that is not individually engaged in the sale, solicitation, or  
 38 negotiation of insurance.

39 (5) A person whose activities in Indiana are limited to advertising,  
 40 without the intent to solicit insurance in Indiana, through  
 41 communications in printed publications or other forms of  
 42 electronic mass media whose distribution is not limited to

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- 1 residents of Indiana, provided that the person does not sell, solicit,
- 2 or negotiate insurance that would insure risks residing, located, or
- 3 to be performed in Indiana.
- 4 (6) A person who is not a resident of Indiana and who sells,
- 5 solicits, or negotiates a contract of insurance for commercial
- 6 property and casualty risks to an insured with risks located in
- 7 more than one state insured under that contract, provided that:
- 8 (A) the person is otherwise licensed as an insurance producer
- 9 to sell, solicit, or negotiate the insurance in the state where the
- 10 insured maintains its principal place of business; and
- 11 (B) the contract of insurance insures risks located in that state.
- 12 (7) A salaried full-time employee who counsels or advises the
- 13 employee's employer about the insurance interests of the
- 14 employer or of the subsidiaries or business affiliates of the
- 15 employer, provided that the employee does not sell or solicit
- 16 insurance or receive a commission.
- 17 (8) An officer, employee, or representative of a rental company
- 18 (as defined in IC 24-4-9-7) who negotiates or solicits insurance
- 19 incidental to and in connection with the rental of a motor vehicle.
- 20 (9) An individual who:
- 21 (A) furnishes only title insurance rate information at the
- 22 request of a consumer; and
- 23 (B) does not discuss the terms or conditions of a title insurance
- 24 policy.
- 25 **(10) A licensed attorney when acting as a title insurance**
- 26 **producer (as defined in IC 27-7-3.5-15) or a title insurance**
- 27 **agent (as defined in IC 27-7-3.5-18).**

28 SECTION 2. IC 27-7-3.5 IS ADDED TO THE INDIANA CODE  
 29 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2006]:

31 **Chapter 3.5. Title Insurance**

32 **Sec. 1. As used in this chapter, "abstract of title" means a**  
 33 **written history, synopsis, or summary of recorded instruments**  
 34 **affecting the title to real property.**

35 **Sec. 2. As used in this chapter, "affiliated business" means a**  
 36 **part of a title insurance agent's business written in Indiana that**  
 37 **was referred to the title insurance agent by a producer of title**  
 38 **insurance business or an associate of a producer of title insurance**  
 39 **business, in circumstances in which the producer or the associate,**  
 40 **or both, have a financial interest in the title insurance agent.**

41 **Sec. 3. As used in this chapter, "alien title insurer" means a title**  
 42 **insurer that is incorporated or organized under the laws of a**

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foreign nation or a foreign province or territory.

Sec. 4. As used in this chapter, "associate" means the following:

- (1) A business organized for profit in which a producer of title insurance business is a director, an officer, a partner, an employee, or an owner of a financial interest in the business.
- (2) An employee of a producer of title insurance business.
- (3) A franchiser or franchisee of a producer of title insurance business.
- (4) A spouse, parent, or child of a producer of title insurance business.
- (5) A person, other than a natural person, that controls, is controlled by, or is under common control with a producer of title insurance business.
- (6) A person with whom a producer of title insurance business or an associate of a producer of title insurance business has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to the producer or associate for the referral of title insurance business.

Sec. 5. As used in this chapter, "bona fide employee" means an individual:

- (1) who devotes substantially all the individual's time to performing services on behalf of a title insurer or title insurance agent; and
- (2) whose compensation for the services described in subdivision (1) is in the form of salary or the equivalent paid by the title insurer or title insurance agent.

Sec. 6. As used in this chapter, "chattels real" means an interest in real estate that is less than a freehold or fee interest.

Sec. 7. As used in this chapter, "commissioner" means the insurance commissioner appointed under IC 27-1-1-2, the commissioner's representative, or the commissioner, director, or superintendent of insurance in another state.

Sec. 8. As used in this chapter, "department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 9. As used in this chapter, "escrow" means written instruments, money, or other items deposited by a party with a depository, an escrow agent, or an escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event.

Sec. 10. As used in this chapter, "financial interest" means a:

- (1) direct or indirect; and

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(2) legal or beneficial;  
interest in an entity, in which the holder of the interest is or will be entitled to at least five percent (5%) of the net profits or net worth of the entity.

Sec. 11. As used in this chapter, "foreign title insurer" means a title insurer that is incorporated or organized under the laws of another state, the District of Columbia, or another jurisdiction of the United States.

Sec. 12. As used in this chapter, "person" means a natural person, a partnership, an association, a cooperative, a corporation, a trust, a limited liability company, or another legal entity.

Sec. 13. As used in this chapter, "premium" means the charge:

- (1) specified under a rule adopted by the commissioner;
- (2) that is made by a title insurer for a title insurance policy, including the charge for:
  - (A) performance of primary title services by a title insurer, title insurance agent, or title agency; and
  - (B) incurring the risks incident to the title insurance policy;

- under the several classifications of title insurance policies and forms; and
- (3) upon which a premium tax is paid.

Sec. 14. As used in this chapter, "primary title services" means the following services:

- (1) Evaluation of a title search or an abstract of title to determine the insurability of title.
- (2) Clearance of underwriting objections.
- (3) Issuance and assumption of responsibility for the issuance of a title insurance policy.

Sec. 15. (a) As used in this chapter, "producer" means a person, including an officer, director, or owner of five percent (5%) or more of the equity or capital of a person, that is engaged in Indiana in the trade, business, occupation, or profession of:

- (1) buying or selling interests in real property;
- (2) making loans secured by interests in real property; or
- (3) acting as a broker, an agent, or a representative of a person who:
  - (A) buys or sells an interest in real property; or
  - (B) lends or borrows money using an interest in real property as security for the loan.

(b) The term does not include an insurance producer or a limited lines producer (both as defined in IC 27-1-15.6-2).

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1           **Sec. 16. As used in this chapter, "referral" means the direction**  
2 **or the exercise of a power or influence over the direction of title**  
3 **insurance business, regardless of whether the consent or approval**  
4 **of another person is sought or obtained with respect to the**  
5 **direction or exercise.**

6           **Sec. 17. As used in this chapter, "security deposit" means funds**  
7 **or other property received by a title insurance agent as collateral**  
8 **to secure an indemnitor's obligation under an indemnity agreement**  
9 **under which a title insurer:**

- 10           **(1) agrees to provide coverage:**
  - 11               **(A) under a title insurance policy; and**
  - 12               **(B) that would otherwise be excluded under a specific**
  - 13               **exception to coverage; and**
- 14           **(2) is granted a perfected security interest in the collateral in**
- 15           **exchange for agreeing to provide the coverage described in**
- 16           **subdivision (1).**

17           **Sec. 18. As used in this chapter, "title insurance agent" means**  
18 **an authorized person, other than a bona fide employee of a title**  
19 **insurer or an attorney licensed to practice law in Indiana, who:**

- 20           **(1) is licensed as a limited lines producer under IC 27-1-15.6;**
- 21           **and**
- 22           **(2) on behalf of a title insurer performs the following acts in**
- 23 **conjunction with the issuance of a title insurance report or**
- 24 **title insurance policy:**
  - 25               **(A) Determines insurability and issues a title insurance**
  - 26               **report or a title insurance policy, or both, based on the**
  - 27               **performance or review of a title search, an examination of**
  - 28               **title, or an abstract of title.**
  - 29               **(B) Performs one (1) or more of the following functions:**
    - 30                   **(i) Collection or disbursement of premiums, escrow,**
    - 31                   **security deposits, or other funds.**
    - 32                   **(ii) Management of escrow, settlement, or closing.**
    - 33                   **(iii) Solicitation or negotiation of title insurance business.**

34           **Sec. 19. As used in this chapter, "title insurance business"**  
35 **means any of the following:**

- 36           **(1) Issuing or offering to issue, as a title insurer, a title**
- 37 **insurance policy.**
- 38           **(2) Transacting or proposing to transact, as a title insurance**
- 39 **agent or title insurer, any of the following activities when**
- 40 **conducted or performed in contemplation of or in conjunction**
- 41 **with the issuance of a title insurance policy:**
  - 42               **(A) Solicitation or negotiation of the issuance of a title**

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1 insurance policy.  
 2 (B) Guaranteeing, warranting, or otherwise insuring the  
 3 correctness of a title search for instruments affecting the  
 4 title to:  
 5 (i) real property;  
 6 (ii) chattels real;  
 7 (iii) cooperative units; and  
 8 (iv) proprietary leases;  
 9 and liens or charges affecting the property described in  
 10 items (i) through (iv).  
 11 (C) Management of escrow, settlement, or closing.  
 12 (D) Execution of title insurance policies.  
 13 (E) Effectuation of contracts of reinsurance.  
 14 (F) Abstraction, searches, or examination of titles.  
 15 (G) Issuance of closing protection letters.  
 16 (3) Guaranteeing, warranting, or insuring searches or  
 17 examinations of title to real property or chattels real.  
 18 (4) Guaranteeing or warranting the status of title concerning:  
 19 (A) ownership of; or  
 20 (B) liens on;  
 21 real property and chattels real by a person other than a  
 22 principal to a transaction related to issuance of a title  
 23 insurance policy.  
 24 Sec. 20. As used in this chapter, "title insurance policy" means  
 25 a contract insuring or indemnifying the owner of, or another  
 26 person that is lawfully interested in, real or personal property or  
 27 chattels real, against loss or damage arising from any of the  
 28 following conditions existing on or before the title insurance policy  
 29 date and not excepted or excluded:  
 30 (1) Defects in or liens or encumbrances on the insured title.  
 31 (2) Unmarketability of the insured title.  
 32 (3) Invalidity, lack of priority, or unenforceability of liens or  
 33 encumbrances on the property.  
 34 (4) Lack of legal right of access to real property.  
 35 (5) Unenforceability of rights in title to real property.  
 36 Sec. 21. As used in this chapter, "title insurance report" means  
 37 a preliminary report, commitment, or binder:  
 38 (1) issued before the issuance of a title insurance policy; and  
 39 (2) containing the terms, conditions, exceptions, and other  
 40 matters incorporated by reference under which a title insurer  
 41 will issue a title insurance policy.  
 42 Sec. 22. As used in this chapter, "title insurance subagent"

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1 means a person, other than a bona fide employee of a title  
2 insurance agent, who on behalf of a title insurance agent  
3 determines insurability and issues a title insurance report or title  
4 insurance policy, or both, based on the performance or review of  
5 a title search or abstract of title. The term does not include a  
6 licensed attorney that performs legal services, including title  
7 examination or closing services.

8 Sec. 23. As used in this chapter, "title insurer" means the  
9 following:

- 10 (1) A company organized under Indiana law to transact title  
11 insurance business.
- 12 (2) A foreign title insurer or alien title insurer that is licensed  
13 in Indiana to transact title insurance business.

14 Sec. 24. As used in this chapter, "underwrite" means to accept  
15 or reject risk:

- 16 (1) on behalf of a title insurer; and
- 17 (2) under authority granted by the title insurer.

18 Sec. 25. (a) The commissioner shall adopt rules under IC 4-22-2  
19 to establish criteria and a process for licensure of the following:

- 20 (1) A title agency.
- 21 (2) A title insurance agent.
- 22 (b) A license may be issued under this section if each person  
23 named on the license possesses all qualifications determined  
24 appropriate by the commissioner.
- 25 (c) A person shall not act as a title agency or title insurance  
26 agent, and a title insurer may not contract with a person to act as  
27 a title agency or title insurance agent, with respect to risks located  
28 in Indiana unless the person is licensed under this section as a title  
29 agency, title insurance agent, or licensed attorney in Indiana.

- 30 (d) An individual:
  - 31 (1) employed by or contracted by a title agency, title  
32 insurance agent, or title insurer;
  - 33 (2) to whom the title agency, title insurance agent, or title  
34 insurer delegates authority to act on the title agency's, title  
35 insurance agent's, or title insurer's behalf; and
  - 36 (3) who engages in title insurance business;

37 shall be individually licensed under this section. This subsection  
38 does not require licensure of an individual who performs only  
39 clerical or administrative functions, including quoting title  
40 insurance fees.

41 (e) An applicant for a title agency license or a title insurance  
42 agent license under this section must also satisfy the requirements

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1 of IC 27-1-15.6 that apply to the title agency or title insurance  
2 agent.

3 (f) A title insurer that engages or employs a title agency shall file  
4 with the department, on a form prescribed by the department, an  
5 application certifying that the proposed title agency meets both of  
6 the following requirements:

7 (1) The title agency has obtained a fidelity bond in an amount  
8 that is acceptable to the title insurer, but not less than fifty  
9 thousand dollars (\$50,000).

10 (2) The title agency has obtained errors and omissions  
11 insurance in an amount acceptable to the title insurer, but not  
12 less than two hundred fifty thousand dollars (\$250,000) per  
13 claim with an aggregate limit with a deductible not greater  
14 than ten thousand dollars (\$10,000).

15 The department shall adopt rules under IC 4-22-2 to specify an  
16 alternative method of compliance with subdivisions (1) and (2) if a  
17 fidelity bond or errors and omissions insurance is generally  
18 unavailable.

19 (g) A title agency shall provide to a title insurer with which the  
20 title agency places title insurance business, in a timely manner,  
21 information requested by the title insurer to comply with reporting  
22 requirements of the department.

23 Sec. 26. (a) A title agency or title insurance agent that is licensed  
24 under section 25 of this chapter shall comply with the requirements  
25 of IC 27-1-15.7 that apply to the title agency or title insurance  
26 agent.

27 (b) Subject to approval under IC 27-1-15.7-4, a continuing  
28 education course, program of instruction, or seminar must include  
29 the following:

30 (1) An insurance related course taught by:

- 31 (A) an accredited college or university; or
- 32 (B) a qualified instructor who has taught a course of  
33 insurance law at an accredited college or university.

34 (2) A course, program of instruction, or seminar developed or  
35 sponsored by a:

- 36 (A) title insurer;
- 37 (B) title insurance agents' association or insurance trade  
38 association; or
- 39 (C) local title insurance agents' group if the instructor  
40 receives no compensation for services.

41 (3) A course approved for continuing legal education credit by  
42 the Indiana State Bar Association.

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1 (c) An individual who teaches an approved course of instruction  
2 or lectures at an approved seminar qualifies for the same number  
3 of continuing education hours as would be granted to an individual  
4 who takes and successfully completes the course or seminar.

5 (d) The department may do the following:

6 (1) For good cause shown, grant an extension of time, not to  
7 exceed one (1) year, during which the continuing education  
8 requirements of IC 27-1-15.7 may be completed.

9 (2) Grant an individual waiver of the continuing education  
10 requirements of IC 27-1-15.7 upon a showing by a licensee  
11 that it is not feasible for the licensee to satisfy the  
12 requirements before the licensee's license renewal date for an  
13 acceptable reason, including the licensee's:

14 (A) serious physical injury or illness;

15 (B) active duty in the armed services for an extended  
16 period; or

17 (C) residence outside the United States.

18 (e) An individual who is subject to this section shall furnish, in  
19 a manner satisfactory to the department, certification of the  
20 individual's completion of courses, programs, or seminars required  
21 by this section.

22 Sec. 27. (a) In addition to the requirements of section 25(f) of  
23 this chapter, the commissioner may require a title insurance agent  
24 to maintain, for the benefit of a title insurer, an insured, or a  
25 depositor, under terms and conditions to be prescribed by the  
26 commissioner, in amounts commensurate with the title insurance  
27 agent's average exposure and the volume and nature of the title  
28 insurance agent's business, a sufficient net worth to ensure the title  
29 insurance agent's solvency and commitment to the purpose of  
30 being a title insurance agent.

31 (b) In determining the precise amount and term and conditions  
32 described in subsection (a), the commissioner may adopt rules  
33 under IC 4-22-2 that:

34 (1) specify acceptable alternatives to the net worth  
35 requirements described in subsection (a); and

36 (2) exempt certain persons from complying with all or part of  
37 the net worth requirements described in subsection (a) or  
38 specified alternatives to the net worth requirements by virtue  
39 of:

40 (A) the person's actual or expected volume of business; or

41 (B) individual circumstances that show that the  
42 requirements would pose an undue hardship on the title

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insurance agent and the title insurance agent's services will be needed by and desirable to insureds.

(c) A title insurance agent shall perform, through the title insurance agent's bona fide employees, primary title services to receive compensation for the services the title insurance agent renders.

Sec. 28. (a) A person, firm, association, or corporation that acts as a title insurance agent shall not place title insurance business with a title insurer unless a written contract is in force between the title insurance agent and the title insurer that:

- (1) specifies the responsibilities of each party;
- (2) if both parties share responsibility for a particular function, specifies the division of the responsibilities; and
- (3) contains the following minimum provisions:

(A) The title insurer may terminate the contract upon written notice if one (1) of the following occurs:

- (i) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agent's license to do title insurance business, or the commencement of legal proceedings by the state of domicile of the title insurance agent that, if successful, will lead to cancellation of the title insurance agent's license to do title insurance business.
- (ii) Material breach of a provision of the contract.
- (iii) Notice of cancellation is provided in accordance with contract termination requirements.

(B) Upon notice of termination, the title insurance agent shall immediately discontinue all underwriting.

This subdivision does not relieve a title insurance agent or title insurer of a contractual obligation not specified in this subdivision.

(b) A title insurance agent shall render accounts detailing all transactions, and remit all funds, due to a title insurer under the contract described in subsection (a) to the title insurer before the later of the following:

- (1) Forty-five (45) days after the end of the month of the effective date of the title insurance policy.
- (2) Within the time specified by the underwriting contract.

(c) Funds collected by a title insurance agent for the account of a title insurer:

- (1) must be held in a fiduciary capacity in a bank that is a qualified financial institution; and

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(2) are the property of the title insurer for whom the funds are collected.

(d) A title insurance agent shall keep records concerning funds described in subsection (c) in a manner that permits identification of funds that belong to a particular title insurer.

(e) At a title insurer's request, a title insurance agent or a title insurance agent's successor in interest, transferee, or receiver shall provide access to and the right to copy all escrow files and underwriting files involving a transaction in which a title insurance report or title insurance policy is issued or will be issued by the title insurance agent.

(f) A title insurance agent shall provide to a title insurer access to and a right to copy accounts and records maintained by the title insurance agent with respect to title insurance business placed with the title insurer.

(g) A contract described in subsection (a) may not be assigned in whole or in part by a title insurance agent without the expressed written consent of the title insurer.

(h) It is the duty of a title insurance agent to immediately report and forward to a title insurer all title related escrow claims and title claims reported to the title insurance agent by a policyholder or another person. However, if the contract described in subsection (a) permits the title insurance agent to settle claims on behalf of the title insurer:

(1) the title insurance agent shall send a copy of the claim file to the title insurer at the title insurer's request or as soon as it is known by the title insurance agent that the claim:

- (A) has the potential to exceed an amount established by the title insurer;
- (B) involves a coverage dispute;
- (C) may exceed the title insurance agent's claims settlement authority;
- (D) is open for more than six (6) months; or
- (E) is closed by payment exceeding an amount established by the title insurer;

(2) files related to title and title related escrow claims settled by the title insurance agent are the property of the title insurer; and

(3) the title insurer may:

- (A) suspend a settlement authority granted to the title insurance agent during a pending dispute regarding a cause for termination of the contract described in

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1 subsection (a); or  
 2 (B) upon:  
 3 (i) the title insurer's written notice to the title insurance  
 4 agent; or  
 5 (ii) the termination of the contract described in  
 6 subsection (a);  
 7 immediately terminate a settlement authority granted to  
 8 the title insurance agent.  
 9 This subdivision does not relieve a title insurance agent or  
 10 title insurer of any other contractual obligation.  
 11 (i) If electronic claims files exist in the records of a title  
 12 insurance agent, the contract described in subsection (a) must  
 13 address the immediate transmission of the data contained in the  
 14 electronic claims files.  
 15 (j) A title insurance agent shall not:  
 16 (1) bind reinsurance or retrocession on behalf of a title  
 17 insurer; or  
 18 (2) appoint a title insurance subagent, without the expressed  
 19 written consent of the title insurance underwriter that  
 20 provides underwriting services under a contract with a title  
 21 insurer.  
 22 (k) The contract described in subsection (a) must include  
 23 specific terms of a title insurance agent's compensation.  
 24 (l) A title insurance agent shall maintain an inventory of title  
 25 insurance policy forms or title insurance policy numbers assigned  
 26 to the title insurance agent by a title insurer.  
 27 (m) A title insurance agent shall:  
 28 (1) annually;  
 29 (2) within a time specified by the contract described in  
 30 subsection (a); or  
 31 (3) concurrent with the renewal date of the title insurance  
 32 agent's contract with a title insurer;  
 33 furnish a title insurer with proof that the title insurance agent is in  
 34 compliance with section 25 of this chapter.  
 35 Sec. 29. (a) If:  
 36 (1) a title insurance agent or title insurer provides settlement  
 37 services and issues a lender's title insurance policy in  
 38 conjunction with a mortgage loan made simultaneously with  
 39 the purchase of all or part of residential real estate securing  
 40 the loan; and  
 41 (2) an owner's title insurance policy has not been requested;  
 42 the title insurance agent or title insurer shall, at the time the title

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1 insurance report is prepared, provide written notice described in  
2 subsection (b) to the purchaser-mortgagor or the  
3 purchaser-mortgagor's representative.

4 (b) Notice provided under subsection (a) must explain:

5 (1) that a lender's title insurance policy will be issued to  
6 protect the mortgage lender;

7 (2) that the lender's title insurance policy does not provide  
8 title insurance protection to the purchaser-mortgagor as the  
9 owner of the property being purchased;

10 (3) what an owner's title insurance policy insures against;

11 (4) what possible risks exist for the purchaser-mortgagor that  
12 could be insured against through the purchase of an owner's  
13 title insurance policy; and

14 (5) that the purchaser-mortgagor may obtain an owner's title  
15 insurance policy protecting the property owner for an  
16 additional cost.

17 Sec. 30. (a) A title insurance agent shall maintain sufficient  
18 records of the title insurance agent's affairs, including the title  
19 insurance agent's escrow operations and escrow trust accounts, to  
20 allow the commissioner to adequately ensure that the title  
21 insurance agent is in compliance with this chapter.

22 (b) The commissioner may prescribe:

23 (1) specific record entries and documents that must be  
24 maintained under subsection (a); and

25 (2) the length of time for which the records and documents  
26 must be maintained.

27 Sec. 31. (a) A title insurance agent, an officer, a director, or an  
28 employee of a title insurance agent, or a person associated with a  
29 title insurance agent or an officer, a director, or an employee of a  
30 title insurance agent, who:

31 (1) is an independent contractor for bookkeeping or similar  
32 purposes; and

33 (2) knowingly or intentionally converts or misappropriates  
34 funds received or held in escrow or in trust by the title  
35 insurance agent;

36 or a person who knowingly or intentionally receives or conspires  
37 to receive funds described in subdivision (2) commits an offense  
38 described in IC 35-43-9-7.

39 (b) If a title insurance agent or title agency defalcates, converts,  
40 or misappropriates funds held by the title insurance agent or title  
41 agency, the following apply:

42 (1) The title insurer is liable for the defalcation, conversion, or

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misappropriation by the title insurance agent or title agency that is convicted of an offense under IC 35-43-9-7.

(2) If the title insurance agent or title agency is a title insurance agent or title agency for two (2) or more title insurers, the liability must be borne by the title insurer upon which a title insurance report or title insurance policy was issued before the illegal act.

(3) If a title insurance report or title insurance policy was not issued, each title insurer represented by the title insurance agent or title agency at the time of the illegal act shall share in the liability in proportion to the premium remitted to the title insurer by the title insurance agent or title agency during the twelve (12) months immediately preceding the illegal act as compared to the total premium remitted to all title insurers by the title insurance agent or title agency during the same period.

(c) A title insurer shall, at least annually, conduct an on-site review of the underwriting, claims, and escrow practices of a title insurance agent, including a review of the title insurance agent's title insurance policy blank inventory and processing operations. If the title insurance agent does not maintain separate bank or trust accounts for each title insurer that the title insurance agent represents, the title insurer shall verify that the funds held on the title insurer's behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

Sec. 32. (a) The title insurance enforcement fund is established for the following purposes:

(1) To provide supplemental funding for department operations that are related to title insurance.

(2) To pay the costs of hiring and employing staff in the areas of enforcement of title insurance law.

(b) The title insurance enforcement fund shall be administered by the commissioner. The expenses of administering the title insurance enforcement fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The following shall be deposited in the title insurance enforcement fund:

(1) Policy reporting fees remitted by title insurers to the

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commissioner under section 33 of this chapter.  
(2) All fines, monetary penalties, and costs imposed upon persons by the department as authorized by law for violation of this chapter.  
(3) Other amounts remitted to the commissioner or the department that are required by law to be deposited into the title insurance enforcement fund.

Sec. 33. (a) The commissioner shall establish a title insurance enforcement unit to enforce this chapter.

(b) The title insurance enforcement unit shall do the following:

- (1) Investigate deceptive acts in connection with title insurance.
- (2) Investigate violations of this chapter.
- (3) Cooperate with federal, state, and local law enforcement agencies in the investigation of:
  - (A) deceptive acts in connection with title insurance; and
  - (B) violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(c) The following may cooperate with the title insurance enforcement unit, including sharing information that is otherwise confidential, to enforce compliance with this chapter:

- (1) The professional licensing agency and appropriate licensing boards with respect to a person licensed under IC 25.
- (2) The department of financial institutions.
- (3) The securities division of the office of the secretary of state.
- (4) The supreme court disciplinary commission, with respect to attorney misconduct.
- (5) The housing and community development authority.
- (6) The department of state revenue.
- (7) The state police department.
- (8) A prosecuting attorney.
- (9) Local law enforcement agencies.
- (10) The Indiana real estate commission.

(d) The commissioner may file a complaint with an entity specified in subsection (c) to enforce this chapter.

(e) This section does not limit the jurisdiction of an entity described in subsection (c).

Sec. 34. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 35. (a) If the commissioner, after notice and hearing under

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1 **IC 4-21.5, determines that a person has violated this chapter, the**  
 2 **commissioner may:**  
 3 **(1) impose a civil penalty of not more than ten thousand**  
 4 **dollars (\$10,000) for each violation; and**  
 5 **(2) if the person is a title insurance agent, order revocation or**  
 6 **suspension of the title insurance agent's license.**  
 7 **(b) If an order of rehabilitation or liquidation of a title insurer**  
 8 **has been entered under IC 27-9, and:**  
 9 **(1) the receiver appointed under the order determines that a**  
 10 **title insurance agent or another person has violated this**  
 11 **chapter; and**  
 12 **(2) the title insurer has suffered a resulting loss or damage;**  
 13 **the receiver may maintain a civil action for recovery of damages**  
 14 **or other appropriate sanctions for the benefit of the title insurer**  
 15 **and the title insurer's policyholders and creditors.**  
 16 **(c) This section does not:**  
 17 **(1) affect the right of the commissioner to impose another**  
 18 **penalty under this title; or**  
 19 **(2) limit or restrict the rights of policyholders, claimants, or**  
 20 **creditors.**  
 21 **Sec. 36. The commissioner or attorney general may bring an**  
 22 **action in a court with jurisdiction to enjoin violations of the federal**  
 23 **Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).**

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 349, 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:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-15.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) As used in this section, "insurer" does not include an officer, director, employee, subsidiary, or affiliate of an insurer.

(b) This chapter does not require an insurer to obtain an insurance producer license.

(c) The following are not required to be licensed as an insurance producer:

(1) An officer, director, or employee of an insurer or of an insurance producer, if the officer, director, or employee does not receive any commission on policies written or sold to insure risks that reside, are located, or are to be performed in Indiana, and if:

(A) the officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(B) the officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(C) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers and the officer, director, or employee's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

(2) A person who secures and furnishes information for the purpose of:

(A) group life insurance, group property and casualty insurance, group annuities, group or blanket accident and sickness insurance;

(B) enrolling individuals under plans;

(C) issuing certificates under plans or otherwise assisting in administering plans; or

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(D) performing administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service.

(3) A person identified in clauses (A) through (C) who is not in any manner compensated, directly or indirectly, by a company issuing a contract, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the employer's or association's employees, or for the employees of a subsidiary or affiliate of the employer or association, that involves the use of insurance issued by an insurer:

(A) An employer or association.

(B) An officer, director, or employee of an employer or association.

(C) The trustees of an employee trust plan.

(4) An:

(A) employee of an insurer; or

(B) organization employed by insurers;

that is engaged in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers, and that is not individually engaged in the sale, solicitation, or negotiation of insurance.

(5) A person whose activities in Indiana are limited to advertising, without the intent to solicit insurance in Indiana, through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of Indiana, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in Indiana.

(6) A person who is not a resident of Indiana and who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that:

(A) the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate the insurance in the state where the insured maintains its principal place of business; and

(B) the contract of insurance insures risks located in that state.

(7) A salaried full-time employee who counsels or advises the employee's employer about the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission.

(8) An officer, employee, or representative of a rental company

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(as defined in IC 24-4-9-7) who negotiates or solicits insurance incidental to and in connection with the rental of a motor vehicle.

(9) An individual who:

(A) furnishes only title insurance rate information at the request of a consumer; and

(B) does not discuss the terms or conditions of a title insurance policy.

**(10) A licensed attorney when acting as a title insurance producer (as defined in IC 27-7-3.5-15) or a title insurance agent (as defined in IC 27-7-3.5-18)."**

Page 3, line 34, after "agent," insert "or".

Page 3, line 34, delete ", or an".

Page 3, line 35, delete "attorney".

Page 3, delete lines 41 through 42.

Page 4, delete lines 1 through 12.

Page 4, line 13, delete "17." and insert "16.".

Page 4, line 18, delete "18." and insert "17.".

Page 4, line 29, delete "19." and insert "18.".

Page 4, line 31, delete "insurer," and insert "**insurer or an attorney licensed to practice law in Indiana,**".

Page 5, line 4, delete "20." and insert "19.".

Page 5, line 36, delete "21." and insert "20.".

Page 6, line 6, delete "22." and insert "21.".

Page 6, line 12, delete "23." and insert "22.".

Page 6, line 20, delete "24." and insert "23.".

Page 6, line 26, delete "25." and insert "24.".

Page 6, line 30, delete "26." and insert "25.".

Page 6, line 41, delete "agency or" and insert "**agency,**".

Page 6, line 41, delete "agent" and insert "**agent, or licensed attorney**".

Page 7, line 35, delete "27." and insert "26.".

Page 7, line 36, delete "26" and insert "25".

Page 8, line 34, delete "28." and insert "27.".

Page 8, line 34, delete "(a) If title insurance business to be written by a title".

Page 8, delete lines 35 through 42.

Page 9, delete lines 1 through 25.

Page 9, line 26, delete "(d)" and insert "**(a)**".

Page 9, line 26, delete "26(f)" and insert "**25(f)**".

Page 8, run in line 34 and page 9, line 26.

Page 9, line 35, delete "(e)" and insert "**(b)**".

Page 9, line 36, delete "(d)," and insert "**(a),**".

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Page 9, line 39, delete "(d);" and insert "(a);".

Page 9, line 41, delete "(d)" and insert "(a)".

Page 10, line 7, delete "(f)" and insert "(c)".

Page 10, delete lines 11 through 21.

Page 10, line 22, delete "30." and insert "28."

Page 12, line 23, after "agent" insert ".".

Page 12, line 32, after "insurer;" insert "or".

Page 12, line 36, delete "insurer; or" and insert "insurer."

Page 12, delete lines 37 through 42.

Page 13, delete line 1.

Page 13, line 14, delete "26" and insert "25".

Page 13, line 15, delete "31." and insert "29."

Page 13, line 39, delete "32." and insert "30."

Page 14, line 7, delete "33." and insert "31."

Page 14, line 7, delete "A title insurance agent may operate as an escrow,".

Page 14, delete lines 8 through 42.

Page 15, delete lines 1 through 12.

Page 15, line 13, delete "(3) and insert "(a)".

Page 14, run in line 7 and page 15, line 13.

Page 15, line 17, delete "(A)", begin a new line block indented and insert:

"(1)".

Page 15, line 19, delete "(B)", begin a new line block indented and insert:

"(2)".

Page 15, line 22, beginning with "or" begin a new line blocked left.

Page 15, line 23, delete "clause (B)" and insert "subdivision (2)".

Page 15, line 25, delete "(4)", begin a new paragraph and insert "(b)".

Page 15, line 26, delete "in trust".

Page 15, line 28, delete "(A)", begin a new line block indented and insert:

"(1)".

Page 15, line 32, delete "(B)", begin a new line block indented and insert:

"(2)".

Page 15, line 37, delete "(C)", begin a new line block indented and insert:

"(3)".

Page 16, line 4, delete "(5)", begin a new paragraph and insert:

"(c)".

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Page 16, line 14, delete "34." and insert "32."

Page 16, line 32, delete "35" and insert "33".

Page 16, line 42, delete "35." and insert "33."

Page 17, line 3, delete "The fee must be specified as a line item on the closing" and insert "**If the person purchases both a lender's title insurance policy and an owner's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of residential real estate securing the loan, the person shall pay one (1) fee of five dollars (\$5) at the time of the payment.**".

Page 17, delete lines 4 through 5.

Page 17, line 11, delete "34" and insert "32".

Page 17, line 12, delete "36." and insert "34."

Page 17, line 34, delete "finance authority." and insert "**and community development authority.**".

Page 17, delete line 39.

Page 17, line 40, delete "(11)" and insert "**(10)**".

Page 18, delete lines 3 through 42.

Page 19, delete lines 1 through 5.

Page 19, line 6, delete "39." and insert "35."

Page 19, line 8, delete "40." and insert "36."

Page 19, line 29, delete "41." and insert "37."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 349 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed Senate Bill 349 be recommitted to a Committee of One, consisting of Senator Waltz, with specific instruction to amend said bill as follows:

Page 15, line 37, delete "Interest that".

Page 15, delete line 38.

Page 16, delete lines 9 through 25.

Page 16, line 26, delete "Sec. 34." and insert "**Sec. 33.**".

Page 17, line 16, delete "Sec. 35." and insert "**Sec. 34.**".

Page 17, line 18, delete "Sec. 36." and insert "**Sec. 35.**".

Page 17, line 39, delete "Sec. 37." and insert "**Sec. 36.**".

(Reference is to ESB 349 as printed January 30, 2006.)

WALTZ

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COMMITTEE REPORT

Madam President: Your Committee on Rules and Legislative Procedure, to which was referred the Motion to recommit Engrossed Senate Bill 349, to a Committee of One, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said Motion be adopted.

GARTON, Chairperson

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COMMITTEE REPORT

Madam President: Your Committee of One, to which was referred Engrossed Senate Bill 349, begs leave to report that said Bill has been amended as directed.

WALTZ, Chairperson

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