



Reprinted  
March 29, 2013

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## ENGROSSED SENATE BILL No. 370

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DIGEST OF SB 370 (Updated March 28, 2013 10:29 am - DI 97)

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

**Synopsis:** Title insurance. Specifies requirements related to title insurance policy filings and closing protection letter issuance.

**Effective:** July 1, 2013.

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### Holdman, Paul, Mrvan

(HOUSE SPONSORS — LEHMAN, DELANEY, KLINKER, BRAUN)

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January 8, 2013, read first time and referred to Committee on Insurance.  
February 7, 2013, reported favorably — Do Pass.  
February 12, 2013, read second time, ordered engrossed.  
February 13, 2013, engrossed.  
February 19, 2013, read third time, passed. Yeas 46, nays 3.

#### HOUSE ACTION

March 12, 2013, read first time and referred to Committee on Insurance.  
March 21, 2013, amended, reported — Do Pass.  
March 28, 2013, read second time, amended, ordered engrossed.

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ES 370—LS 7156/DI 97+



Reprinted  
March 29, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 370

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 27-1-22-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) This chapter  
3 applies to all forms of casualty insurance including fidelity, surety, and  
4 guaranty bonds, to all forms of motor vehicle insurance, to all forms of  
5 fire, marine, and inland marine insurance, **to all forms of title**  
6 **insurance**, and to any and all combinations of the foregoing or parts  
7 thereof, on risks or operations in this state, except:  
8 (1) reinsurance, other than joint reinsurance to the extent stated  
9 in section 14 of this chapter;  
10 (2) accident and health insurance;  
11 (3) insurance of vessels or craft, their cargoes, marine builders'  
12 risks, marine protection and indemnity, or other risks commonly  
13 insured under marine, as distinguished from inland marine,  
14 insurance policies;  
15 (4) insurance against loss or damage to aircraft or against liability  
16 arising out of the ownership, maintenance, or use of aircraft; **and**  
17 (5) worker's compensation insurance. ~~and~~

ES 370—LS 7156/DI 97+



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1           ~~(6) abstract and title insurance.~~

2           (b) Inland marine insurance includes insurance defined by statute,  
3 or by interpretation of statute, or if not so defined or interpreted, by  
4 ruling of the commissioner of insurance (referred to as the  
5 commissioner), or as established by general custom of the business, as  
6 inland marine insurance.

7           SECTION 2. IC 27-1-22-28 IS ADDED TO THE INDIANA CODE  
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2013]: **Sec. 28. (a) This section applies to a title policy issued  
10 after June 30, 2014. To the extent that this section conflicts with  
11 any other provision of this chapter, this section is controlling.**

12           **(b) The definitions in IC 27-7-3 apply throughout this section.**

13           **(c) For purposes of this section, "form", when used in reference  
14 to a title policy:**

15           **(1) includes:**

16           **(A) a commitment for title insurance and a title policy or  
17 guaranty; and**

18           **(B) the terms and conditions of the title insurance or title  
19 policy or guaranty; and**

20           **(2) excludes:**

21           **(A) a reinsurance contract or agreement;**

22           **(B) an exception:**

23           **(i) that is included in a commitment or title policy; and**

24           **(ii) for specific defects in a title that may be ascertained  
25 from an examination of a specific risk;**

26           **(C) an affirmative assurance of a company, through  
27 endorsement or otherwise, with respect to a defect  
28 described in clause (B); and**

29           **(D) any other exception from coverage due to:**

30           **(i) a limitation on the examination of the risk imposed by  
31 a particular applicant for title insurance; or**

32           **(ii) failure of a particular applicant for title insurance to  
33 provide the data necessary for determination of  
34 insurability.**

35           **(d) A company doing business in Indiana shall, at least thirty  
36 (30) days before the proposed effective date of the filing, file with  
37 the commissioner all of the following that the company proposes to  
38 use, including the proposed effective date and an indication of the  
39 character and extent of the coverage contemplated:**

40           **(1) The form of a title policy, endorsement, manual, rating  
41 schedule or rating plan, and other rating rule.**

42           **(2) A modification of any filing described in subdivision (1).**

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1 If the commissioner does not, within a thirty (30) day waiting  
 2 period beginning on the date of filing, disapprove a filing made  
 3 under this subsection, the filing is considered approved.

4 (e) If a company is a member of or a subscriber to a rating  
 5 organization that is licensed under section 8 of this chapter, the  
 6 filing requirement of subsection (d) may be satisfied by a filing  
 7 made:

8 (1) by the rating organization; and

9 (2) on behalf of all of the rating organization's members and  
 10 subscribers;

11 in accordance with subsection (f).

12 (f) A rating organization that makes a filing described in  
 13 subsection (e) shall, at least thirty (30) days before the proposed  
 14 effective date of the filing, file with the commissioner for review  
 15 and approval or disapproval all of the following that the company  
 16 proposes to use, including the proposed effective date and an  
 17 indication of the character and extent of the coverage  
 18 contemplated:

19 (1) The form of a title policy, endorsement, manual, rating  
 20 schedule or rating plan, and other rating rule.

21 (2) A modification of any filing described in subdivision (1).

22 (g) The commissioner shall, within a thirty (30) day waiting  
 23 period beginning on the date of filing, approve or disapprove a  
 24 filing made under subsection (f). However, the commissioner may  
 25 do the following:

26 (1) Upon written notice to the rating organization making the  
 27 filing within the initial thirty (30) day period, extend the  
 28 waiting period for not more than an additional thirty (30)  
 29 days to enable the commissioner to complete the review of the  
 30 filing.

31 (2) With the consent of the rating organization making the  
 32 filing, extend the waiting period for additional thirty (30) day  
 33 periods.

34 (3) Upon receiving a written request by the rating  
 35 organization making the filing, approve the filing or a part of  
 36 the filing that the commissioner has reviewed to become  
 37 effective before the expiration of a waiting period described  
 38 in subdivision (1) or (2).

39 (h) If the commissioner, during a waiting period described in  
 40 subsection (g), determines that a filing made by a rating  
 41 organization under this section:

42 (1) meets the requirements of this chapter, the commissioner

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1 shall approve the filing and send to the rating organization  
2 written notice of the approval; or

3 (2) does not meet the requirements of this chapter, the  
4 commissioner shall disapprove the filing and send to the  
5 rating organization written notice of the disapproval,  
6 including the following:

7 (A) The notice must specify the manner in which the filing  
8 does not meet the requirements of this chapter.

9 (B) The notice must specify that the filing will not become  
10 effective.

11 (i) If the commissioner, at any time after approval under  
12 subsection (d), (g), or (h), determines that the filing does not  
13 comply with this chapter, the commissioner shall, after a hearing  
14 held on ten (10) days written notice:

15 (1) sent to the person making the filing; and

16 (2) specifying the matters to be considered at the hearing;  
17 issue an order specifying the manner in which the filing does not  
18 comply with this chapter and the date on which the filing will no  
19 longer be effective.

20 (j) The commissioner shall send a copy of an order issued under  
21 subsection (i) to the person making the filing. The order does not  
22 affect a title policy made or issued before the date specified in the  
23 order on which the filing is no longer effective.

24 (k) The commissioner may not disapprove a filing described in  
25 subsection (d) or (f) if the rates produced by the filing comply with  
26 this chapter.

27 (l) A rating organization that receives notice of a hearing or a  
28 copy of an order under subsection (i) shall promptly notify all of  
29 the rating organization's members or subscribers that would be  
30 affected by the hearing or order. For purposes of subsection (i),  
31 notice to a rating organization is considered to be notice to the  
32 rating organization's members or subscribers.

33 (m) If:

34 (1) a filing is not accompanied by the information on which  
35 the filing is based; and

36 (2) the commissioner does not have sufficient information to  
37 determine whether the filing complies with this chapter;  
38 the commissioner shall require the person making the filing to  
39 furnish to the commissioner the information on which the filing is  
40 based, and the waiting period described in subsection (d) or (g)  
41 begins on the date on which all required information is received by  
42 the commissioner.

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1 (n) Information furnished under subsection (m) may include the  
2 following:

3 (1) The experience or judgment of the company or the rating  
4 organization making the filing.

5 (2) The company's or rating organization's interpretation of  
6 any statistical data relied on by the company or rating  
7 organization.

8 (3) The experience of other title insurance companies or  
9 rating organizations.

10 (4) Any other factor that the commissioner considers relevant.

11 (o) After approval of a filing under subsection (d), (g), or (h), the  
12 filing and information furnished in support of the filing is a public  
13 record for purposes of IC 5-14-3.

14 SECTION 3. IC 27-7-3-2 IS AMENDED TO READ AS FOLLOWS  
15 [EFFECTIVE JULY 1, 2013]: Sec. 2. As used in this chapter and  
16 unless a different meaning appears from the context:

17 (a) The term "title insurance" means a contract of insurance against  
18 loss or damage on account of encumbrances upon or defects in the title  
19 to real estate.

20 (b) The term "closing protection letter" means a written  
21 indemnification of or undertaking to a party to a real estate  
22 transaction by a principal that specifies the extent to which the  
23 principal is responsible for intentional or unintentional misconduct  
24 or errors of an agent of the principal in connection with the closing  
25 of the real estate transaction.

26 (c) The term "company" shall mean and include any corporation,  
27 domestic or foreign, to which this chapter is applicable.

28 (d) The term "department" shall mean the department of  
29 insurance of the state of Indiana.

30 (e) The term "commissioner" shall mean the insurance  
31 commissioner.

32 (f) The term "public record" has the meaning set forth in  
33 IC 5-14-3-2.

34 (g) The term "title policy" means a policy issued by a company  
35 that:

36 (1) is authorized to do business as a title insurance company  
37 under section 3 of this chapter; and

38 (2) insures or indemnifies persons with an interest in real  
39 property against loss or damage caused by a lien on, an  
40 encumbrance on, a defect in, or the unmarketability of the  
41 title to the real property.

42 (h) The term "title search" means a search and examination of

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1 the public records sufficient to determine:

- 2 (1) ownership of;  
 3 (2) encumbrances on;  
 4 (3) liens on; and  
 5 (4) defects in the title to;

6 the real estate that is the subject of the search.

7 SECTION 4. IC 27-7-3-22 IS ADDED TO THE INDIANA CODE  
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 9 1, 2013]: **Sec. 22. (a) In a residential real estate transaction**  
 10 **described in section 15.5(a) and 15.5(b) of this chapter in which:**

- 11 (1) a title policy is issued by a company or title insurance  
 12 producer on behalf of a company; and  
 13 (2) the company or title insurance producer will also act as a  
 14 settlement or closing agent;

15 the company or title insurance producer shall issue a closing  
 16 protection letter to the lender, borrower, buyer, and seller of the  
 17 property. A company authorized to do business under section 3 of  
 18 this chapter shall charge a fee approved under subsection (e) to  
 19 each party receiving the benefit of a closing protection letter.

20 (b) In a nonresidential real estate transaction in which:

- 21 (1) a title policy is issued by a company or title insurance  
 22 producer on behalf of a company; and  
 23 (2) the company or title insurance producer will also act as a  
 24 settlement or closing agent;

25 the company or title insurance producer may issue a closing  
 26 protection letter to the lender, borrower, buyer, and seller of the  
 27 property on request.

28 (c) A closing protection letter issued under this section must  
 29 indemnify the party to which the closing protection letter is issued  
 30 against any loss of settlement funds (under the terms and  
 31 conditions of the closing protection letter) that results from the  
 32 following acts of the company or title insurance producer that  
 33 issues the closing protection letter:

- 34 (1) Theft or misappropriation of settlement funds in  
 35 connection with a transaction in which the title policy is  
 36 issued, only to the extent that the theft or misappropriation  
 37 relates to the:

38 (A) status of title to; or

39 (B) validity, enforceability, and priority of the lien of the  
 40 mortgage on;

41 the party's interest in land.

- 42 (2) Failure to comply with the written closing instructions

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1           **agreed to by the company or title insurance producer acting**  
2           **as the settlement agent, only to the extent that the failure**  
3           **relates to the:**  
4                 **(A) status of title to; or**  
5                 **(B) validity, enforceability, and priority of the lien of the**  
6                 **mortgage on;**  
7                 **the party's interest in land.**  
8           **(d) The issuance of a closing protection letter under this section**  
9           **in contemplation of or in conjunction with the issuance of a title**  
10           **insurance policy is part of the business of title insurance for**  
11           **purposes of section 3 of this chapter.**  
12           **(e) The amount of the fee that a company authorized to do**  
13           **business under section 3 of this chapter charges to each party**  
14           **receiving the benefits of a closing protection letter:**  
15                 **(1) must be submitted to and approved by the commissioner**  
16                 **under IC 27-1-22-28; and**  
17                 **(2) is not subject to an agreement requiring a division of fees**  
18                 **or premiums collected on behalf of the company.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance, to which was referred Senate Bill No. 370, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 370 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 2.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 370, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 9, after "(a)" insert "**This section applies to a title policy issued after June 30, 2014.**".

and when so amended that said bill do pass.

(Reference is to SB 370 as printed February 8, 2013.)

LEHMAN, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 370 be amended to read as follows:

Page 2, line 35, delete "(or a rating".

Page 2, line 36, delete "organization making the filing for a company)".

Page 2, line 37, delete "issuing a title policy," and insert "**the proposed effective date of the filing,**".

Page 3, between lines 1 and 2, begin a new line blocked left and insert:

**"If the commissioner does not, within a thirty (30) day waiting**

ES 370—LS 7156/DI 97+

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period beginning on the date of filing, disapprove a filing made under this subsection, the filing is considered approved."

Page 3, line 8, delete "." and insert ";

in accordance with subsection (f).

(f) A rating organization that makes a filing described in subsection (e) shall, at least thirty (30) days before the proposed effective date of the filing, file with the commissioner for review and approval or disapproval all of the following that the company proposes to use, including the proposed effective date and an indication of the character and extent of the coverage contemplated:

(1) The form of a title policy, endorsement, manual, rating schedule or rating plan, and other rating rule.

(2) A modification of any filing described in subdivision (1)."

Page 3, delete lines 9 through 11, begin a new paragraph and insert:

"(g) The commissioner shall, within a thirty (30) day waiting period beginning on the date of filing, approve or disapprove a filing made under subsection (f). However, the commissioner may do the following:"

Page 3, line 12, delete "person" and insert "rating organization".

Page 3, line 16, delete "person" and insert "rating organization".

Page 3, line 18, delete "person" and insert "rating organization".

Page 3, line 19, delete "authorize" and insert "approve".

Page 3, delete lines 23 through 30, begin a new paragraph and insert:

"(h) If the commissioner, during a waiting period described in subsection (g), determines that a filing made by a rating organization under this section:

(1) meets the requirements of this chapter, the commissioner shall approve the filing and send to the rating organization written notice of the approval; or

(2) does not meet the requirements of this chapter, the commissioner shall disapprove the filing and send to the rating organization written notice of the disapproval, including the following:

(A) The notice must specify the manner in which the filing does not meet the requirements of this chapter.

(B) The notice must specify that the filing will not become effective."

Page 3, line 31, delete "(h)" and insert "(i)".

Page 3, line 31, delete "the applicable waiting" and insert "approval under subsection (d), (g), or (h),".

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- Page 3, line 32, delete "period described in subsection (f),".
- Page 3, line 40, delete "(i)" and insert "**(j)**".
- Page 3, line 41, delete "(h)" and insert "**(i)**".
- Page 4, line 2, delete "(j)" and insert "**(k)**".
- Page 4, line 3, delete "(d)(1) or (d)(2)" and insert "**(d) or (f)**".
- Page 4, line 5, delete "(k)" and insert "**(l)**".
- Page 4, line 6, delete "(h)" and insert "**(i)**".
- Page 4, line 8, delete "(h)," and insert "**(i),**".
- Page 4, line 11, delete "(l)" and insert "**(m)**".
- Page 4, line 16, delete "company" and insert "**person making the filing**".
- Page 4, line 18, delete "(f)" and insert "**(d) or (g)**".
- Page 4, line 20, delete "(m)" and insert "**(n)**".
- Page 4, line 20, delete "(l)" and insert "**(m)**".
- Page 4, line 30, delete "(n)" and insert "**(o)**".
- Page 4, line 30, after "After" insert "**approval of**".
- Page 4, line 30, delete "becomes effective," and insert "**under subsection (d), (g), or (h),**".

(Reference is to ESB 370 as printed March 22, 2013.)

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