SENATE BILL No. 370

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-1-22; IC 27-7-3.

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

Effective: July 1, 2013.

Holdman

January 8, 2013, read first time and referred to Committee on Insurance.

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Introduced

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.

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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:

SECTION 1. IC 27-1-22-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) This chapter applies to all forms of casualty insurance including fidelity, surety, and guaranty bonds, to all forms of motor vehicle insurance, to all forms of fire, marine, and inland marine insurance, **to all forms of title insurance,** and to any and all combinations of the foregoing or parts thereof, on risks or operations in this state, except:

(1) reinsurance, other than joint reinsurance to the extent stated in section 14 of this chapter;

(2) accident and health insurance;

(3) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(4) insurance against loss or damage to aircraft or against liability arising out of the ownership, maintenance, or use of aircraft; **and**

(5) worker's compensation insurance. ~~and~~

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

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

SECTION 2. IC 27-1-22-28 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 28. (a) To the extent that this section conflicts with any other provision of this chapter, this section is controlling.**

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

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

(1) includes:

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

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

(2) excludes:

(A) a reinsurance contract or agreement;

(B) an exception:

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

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

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

(D) any other exception from coverage due to:

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

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

(d) A company doing business in Indiana (or a rating organization making the filing for a company) shall, at least thirty (30) days before issuing a title policy, file with the commissioner 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).

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

(1) by the rating organization; and

(2) on behalf of all of the rating organization's members and subscribers.

(f) Unless the commissioner approves the filing sooner, a filing under subsection (d) must be on file for thirty (30) days before the filing becomes effective. The commissioner may do the following:

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

(2) With the consent of the person making the filing, extend the waiting period for additional thirty (30) day periods.

(3) Upon receiving a written request by the person making the filing, authorize the filing or a part of the filing that the commissioner has reviewed to become effective before the expiration of a waiting period described in subdivision (1) or (2).

(g) If the commissioner, during a waiting period described in subsection (f), determines that a filing does not meet the requirements of this chapter, the commissioner shall send to the person making the filing written notice of disapproval of the filing. The notice sent under this subsection must specify:

(1) the manner in which the filing does not meet the requirements of this chapter; and

(2) that the filing will not become effective.

(h) If the commissioner, at any time after the applicable waiting period described in subsection (f), determines that the filing does not comply with this chapter, the commissioner shall, after a hearing held on ten (10) days written notice:

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

(2) specifying the matters to be considered at the hearing;

issue an order specifying the manner in which the filing does not comply with this chapter and the date on which the filing will no longer be effective.

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

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(j) The commissioner may not disapprove a filing described in subsection (d)(1) or (d)(2) if the rates produced by the filing comply with this chapter.

(k) A rating organization that receives notice of a hearing or a copy of an order under subsection (h) shall promptly notify all of the rating organization's members or subscribers that would be affected by the hearing or order. For purposes of subsection (h), notice to a rating organization is considered to be notice to the rating organization's members or subscribers.

(l) If:

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

(2) the commissioner does not have sufficient information to determine whether the filing complies with this chapter;

the commissioner shall require the company to furnish to the commissioner the information on which the filing is based, and the waiting period described in subsection (f) begins on the date on which all required information is received by the commissioner.

(m) Information furnished under subsection (l) may include the following:

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

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

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

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

(n) After a filing becomes effective, the filing and information furnished in support of the filing is a public record for purposes of IC 5-14-3.

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

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

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

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of the real estate transaction.

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

~~(c)~~ **(d)** The term "department" shall mean the department of insurance of the state of Indiana.

~~(d)~~ **(e)** The term "commissioner" shall mean the insurance commissioner.

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

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

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

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

~~(f)~~ **(h)** The term "title search" means a search and examination of the public records sufficient to determine:

(1) ownership of;

(2) encumbrances on;

(3) liens on; and

(4) defects in the title to;

the real estate that is the subject of the search.

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

(1) a title policy is issued by a company or title insurance producer on behalf of a company; and

(2) the company or title insurance producer will also act as a settlement or closing agent;

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

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

(1) a title policy is issued by a company or title insurance producer on behalf of a company; and

(2) the company or title insurance producer will also act as a settlement or closing agent;

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

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

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

(A) status of title to; or

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

the party's interest in land.

(2) Failure to comply with the written closing instructions agreed to by the company or title insurance producer acting as the settlement agent, only to the extent that the failure relates to the:

(A) status of title to; or

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

the party's interest in land.

(d) The issuance of a closing protection letter under this section in contemplation of or in conjunction with the issuance of a title insurance policy is part of the business of title insurance for purposes of section 3 of this chapter.

(e) The amount of the fee that a company authorized to do business under section 3 of this chapter charges to each party receiving the benefits of a closing protection letter:

(1) must be submitted to and approved by the commissioner under IC 27-1-22-28; and

(2) is not subject to an agreement requiring a division of fees or premiums collected on behalf of the company.

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