

Introduced Version

SENATE BILL No. 410

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-7.

Synopsis: Title insurance rates. Specifies requirements for title insurance form and rate filings. Provides for licensure of a rating bureau. Specifies requirements for performance of a rating bureau's duties.

Effective: July 1, 2012.

Tallian

January 9, 2012, read first time and referred to Committee on Insurance and Financial Institutions.

Introduced

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

SENATE BILL No. 410

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

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

SOURCE: IC 27-7-3-2; (12)IN0410.1.1. --> SECTION 1. IC 27-7-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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 "company" shall mean and include any corporation, domestic or foreign, to which this chapter is applicable.

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

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

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

(f) 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.

(g) The term "form", when used in reference to a policy or contract:

(1) includes a binder for title insurance and policies of title insurance or guaranty, including the terms and conditions of the title insurance or policy of title insurance or guaranty; and

(2) excludes:

(A) a reinsurance contract or agreement;

(B) an exception that is:

(i) included in a binder or 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 a determination of insurability.

SOURCE: IC 27-7-3-13.5; (12)IN0410.1.2. --> SECTION 2. IC 27-7-3-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec. 13.5. (a) A company doing business in Indiana shall, at least thirty (30) days before issuing a

title insurance policy or contract, file with the commissioner the form of the title insurance policy or contract. However, if the form is approved by the commissioner earlier than thirty (30) days after filing, the policy or contract may be issued upon approval.

(b) A filing required by subsection (a) may be made by a rating bureau licensed under IC 27-7-3.1 on behalf of all of the rating bureau's members and subscribers.

SOURCE: IC 27-7-3.1; (12)IN0410.1.3. --> SECTION 3. IC 27-7-3.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 3.1. Title Insurance Rates

Sec. 1. (a) The definitions in IC 27-7-3-2 apply throughout this chapter.

(b) As used in this chapter, "advisory organization" means a group, association, or other organization of insurers that:

(1) is located in Indiana or in another state;

(2) assists in rate making:

(A) for an insurer that makes the insurer's own filings; or

(B) for a rating bureau;

by the collection and furnishing of loss or expense statistics or the submission of recommendations; and

(3) does not make filings under this chapter.

(c) As used in this chapter, "insurer" means a company.

(d) As used in this chapter, "person" has the meaning set forth in IC 27-1-2-3.

Sec. 2. (a) The following apply to the making of rates for title insurance policies:

(1) Manuals, minimum class rates, rating schedules, or rating plans shall be made and adopted.

(2) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(3) The following must be considered:

(A) Past and prospective loss experience in Indiana and other states.

(B) A reasonable margin for underwriting profit and contingencies.

(C) Dividends, savings, or unabsorbed premium deposits allowed or returned by:

(i) insurers to policyholders; or

(ii) a rating bureau to members or subscribers of the rating bureau.

(D) Past and prospective expenses in the United States, and particularly in Indiana.

(E) Any other factor that is relevant in Indiana or another state.

(b) Except to the extent necessary to comply with subsection (a), uniformity among insurers in matters described in this section is not required or prohibited.

Sec. 3. (a) An insurer shall file with the commissioner, every:

(1) form of a policy, endorsement, rider, manual, minimum class rate, rating schedule, or rating plan;

(2) other rating rule; and

(3) modification of any filing described in subdivision (1) or (2);

that the insurer proposes to use, including the proposed effective

date and an indication of the character and extent of the coverage contemplated.

(b) If:

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

(2) the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter;

the commissioner shall require the insurer to furnish to the commissioner the information on which the filing is based. The filing approval waiting period begins on the date on which all the required information is furnished to the commissioner.

(c) The information furnished under subsection (b) in support of a filing may include the

following:

- (1) The experience or judgment of the insurer or rating bureau making the filing.
- (2) The insurer's or rating bureau's interpretation of any statistical data relied on.
- (3) The experience of other insurers or rating bureaus.
- (4) Any other factor that the commissioner considers to be relevant.

(d) A filing and any supporting information must be open to public inspection after the filing becomes effective.

Sec. 4. (a) An insurer may satisfy the insurer's obligation to make filings under this chapter by:

- (1) becoming a member of, or a subscriber to, a rating bureau that is licensed under this chapter to make the filings; and
- (2) authorizing the commissioner to accept filings made by a licensed rating bureau on the insurer's behalf.

(b) This chapter does not require an insurer to become a member of, or a subscriber to, a rating bureau.

Sec. 5. (a) As soon as reasonably possible after the commissioner receives a filing under this chapter, the commissioner shall review the filing to determine whether the filing meets the requirements of this chapter.

(b) The commissioner may, by written order sent to the insurer or rating bureau and without notice or hearing, suspend or modify the requirements of a filing or classes of risks, the rates for which cannot practicably be filed before the filing or classes of risks are used. The commissioner may make any examination that the commissioner considers necessary to determine whether rates affected by an order under this subsection meet the standards set

forth in section 2 of this chapter.

(c) If:

(1) an insured files with the commissioner a written application stating the reasons that a rate that is in excess of a rate specified in a filing under this chapter should be allowed for a specific risk; and

(2) the commissioner approves the application;

the rate that is in excess of the rate specified may be used on the specific risk.

(d) An insurer shall not make or issue a title insurance policy or contract except in accordance with the filings in effect under this chapter.

Sec. 6. (a) If, within the filing approval waiting period, the commissioner determines that a filing does not meet the requirements of this chapter, the commissioner shall send to the insurer or rating bureau that made the filing written notice of disapproval of the filing. The written notice must specify:

(1) in what respects the filing fails to comply with this chapter; and

(2) that the filing will not become effective.

(b) If, within the filing approval waiting period, the commissioner finds that a filing does not comply with this chapter, the commissioner shall, after a hearing held at least ten (10) days after providing written notice:

(1) of the hearing to the insurer or rating bureau that made the filing; and

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

issue to the insurer or rating bureau an order specifying in what respects the commissioner finds that the filing fails to comply and specifying on what date the filing is no longer effective.

(c) An order issued under subsection (b) does not affect a contract or policy made or issued before the date specified in the order.

Sec. 7. (a) A person that:

(1) is aggrieved with respect to a filing that is in effect; and

(2) is not the insurer or rating bureau that made the filing;

may apply in writing to the commissioner for a hearing on the grievance, including the grounds

relied upon by the person in making the application.

(b) If the commissioner finds that:

(1) an application made under subsection (a) is made in good faith;

(2) the person would be aggrieved as stated in the application if the grounds are established; and

(3) the grounds otherwise justify holding the hearing;

the commissioner shall, not more than thirty (30) days after receiving the application, hold a hearing at least ten (10) days after providing written notice of the hearing to the person and to the insurer or rating bureau that made the filing.

(c) If, after a hearing under subsection (b), the commissioner finds that the filing does not comply with this chapter, the commissioner shall:

(1) issue an order:

(A) specifying in what respects the filing fails to comply; and

(B) stating the date on which the filing is no longer effective; and

(2) send a copy of the order to the person and to the insurer or rating bureau that made the filing.

(d) An order issued under subsection (c) does not affect a title insurance policy or contract that is made or issued before the date on which the filing is no longer effective.

Sec. 8. The commissioner shall not disapprove a:

(1) manual;

(2) minimum class rate;

(3) rating schedule;

(4) rating plan;

(5) rating rule; or

(6) modification of an item described in subdivisions (1) through (5);

that has been filed under section 3 of this chapter if the rates produced by the item comply with this chapter.

Sec. 9. (a) A rating bureau that receives notice of a hearing or a copy of an order under section 6 or 7 of this chapter shall promptly notify each of the rating bureau's members or subscribers that are affected by the hearing or order.

(b) Notice of a hearing or a copy of an order delivered to a rating bureau under subsection (a) is considered to have been delivered to the members or subscribers described in subsection (a).

Sec. 10. (a) A person that is located in Indiana or in another state may apply to the commissioner for a license to operate as a rating bureau for title insurance. The application shall be accompanied by the following:

(1) A copy of the person's constitution, articles of agreement or association or certificate of incorporation, and bylaws, rules, and regulations governing the conduct of the person's business.

(2) A list of the person's members and subscribers.

(3) The name and address of a resident of Indiana upon whom:

(A) notices or orders of the commissioner; or

(B) process affecting the rating bureau;

may be served.

(4) A statement of the person's qualifications as a rating bureau.

(b) If the commissioner determines that a person described in subsection (a) is competent, trustworthy, and otherwise qualified to act as a rating bureau and that the person's constitution, articles of agreement or association or certificate of incorporation, and bylaws, rules, and regulations governing the conduct of the person's business conform to the law, the commissioner shall issue to the person a license to operate as a rating bureau.

(c) The commissioner shall grant, grant in part, or deny licensure of a person described in

subsection (a) within sixty (60) days after the date the commissioner receives the application.

(d) A license issued under this section is effective for three (3) years from the date of issuance unless the commissioner revokes or suspends the license.

(e) The fee for a license issued under this section is two hundred dollars (\$200). The commissioner shall deposit a fee collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

(f) If the commissioner determines, after notice and hearing, that a licensee has ceased complying with this chapter, the commissioner may suspend or revoke a license issued under this section.

(g) A rating bureau shall notify the commissioner promptly of any change in an item described in subsection (a)(1), (a)(2), or (a)(3).

Sec. 11. (a) A rating bureau that is licensed under this chapter shall establish internal rules for the conduct of the rating bureau's business and submit the rules to the commissioner for approval. The internal rules must:

(1) include rules requiring the rating bureau to:

(A) permit an insurer that is not a member of the rating

bureau to subscribe to the rating bureau's rating services for title insurance; and

(B) not discriminate among the rating bureau's members and subscribers in providing rating services; and

(2) not prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by an insurer to a policyholder or by a rating bureau to a member or subscriber.

(b) If a rating bureau fails to act upon an insurer's application to subscribe to the rating bureau's services within thirty (30) days after the rating bureau receives the application, the insurer may request a review by the commissioner, as if the application had been rejected, for a determination of the justification for the failure to act on the application.

(c) The commissioner shall:

(1) upon the request of:

(A) a rating bureau's subscriber; or

(B) an insurer refused admittance as a rating bureau's subscriber; and

(2) after a hearing held at least ten (10) days after written notice of the hearing is provided to the rating bureau and subscriber or insurer;

concerning whether an internal rule prompting the subscriber's request is reasonable or whether the refusal of the insurer is justified, and review the internal rule's application or the rating bureau's refusal.

(d) The following apply to a review described in subsection (c):

(1) If the commissioner determines that the internal rule described in subsection (c) is unreasonable, the:

(A) commissioner shall notify the rating bureau of the determination; and

(B) rating bureau shall not apply the internal rule to subscribers.

(2) If the commissioner finds that a refusal of an insurer as a subscriber to a rating bureau occurred:

(A) without justification, the commissioner shall order the rating bureau to admit the insurer as a subscriber; or

(B) with justification, the commissioner shall affirm the rating bureau's refusal.

Sec. 12. (a) A rating bureau may:

(1) provide for the examination of:

(A) policies;

(B) daily reports;

- (C) binders;
- (D) renewal certificates;
- (E) endorsements;
- (F) other evidences of insurance; or
- (G) the cancellation of insurance; and

(2) establish internal rules governing the submission of an item specified in subdivision (1).

(b) Internal rules established under subsection (a) must contain a provision specifying that if an insurer does not, less than sixty (60) days after the rating bureau calls to the attention of the insurer an error or omission in the insurer's submission of an item specified in subsection (a)(1), furnish to the rating bureau satisfactory evidence that the error or omission has been corrected, the rating bureau shall notify the commissioner concerning the error or omission.

(c) All information submitted to a rating bureau for examination under this section is confidential.

Sec. 13. A rating bureau may subscribe for or purchase actuarial, technical, or other services, which must be made available to all members and subscribers without discrimination.

Sec. 14. (a) A member of or subscriber to a rating bureau shall adhere to the filings made by the rating bureau on behalf of the member or subscriber. However, an insurer may make written application (with a copy to the rating bureau) to the commissioner to file a deviation from the class rates, schedules, rating plans, or rules concerning title insurance.

(b) A written application made under subsection (a) must specify the basis for the requested deviation.

(c) The commissioner shall do the following with respect to a written application made under subsection (a):

(1) Set a time and place for a hearing concerning the application, at least ten (10) days after sending written notice of the hearing to the insurer and rating bureau, at which the insurer and the rating bureau may be heard. The commissioner may waive the hearing:

- (A) upon the request of the rating bureau; and
- (B) with the insurer's consent.

(2) In considering the application, consider the available statistics and principles for rate making described in section 2 of this chapter.

(3) If the commissioner determines that the deviation is

justified, permit the deviation to be filed for the insurer, effective upon filing.

(4) If the commissioner determines that premiums resulting from the deviation would be excessive, inadequate, or unfairly discriminatory, deny the application for the deviation.

(d) A deviation that is permitted under subsection (c) is effective upon filing and remains effective until the commissioner terminates the deviation.

Sec. 15. (a) A member of or subscriber to a rating bureau may appeal to the commissioner an action of the rating bureau in approving or rejecting a proposed change in or addition to the filings of the rating bureau.

(b) The commissioner shall, after a hearing held at least ten (10) days after written notice of the hearing is provided to the appellant and the rating bureau described in subsection (a), issue an order approving the action of the rating bureau or directing the rating bureau to further consider the proposed change or addition.

(c) If:

(1) an appeal under this section is from the action of the rating bureau in rejecting a proposed addition to filings; and

(2) the commissioner determines that the action is unreasonable; the commissioner may order the rating bureau to make, within a reasonable time after the order is issued and on behalf of the rating bureau's members and subscribers, an addition to the filings that is consistent with the commissioner's determination.

Sec 16. (a) If an insured that is affected by a rate made by:

- (1) a rating bureau; or**
- (2) an insurer that makes the insurer's own rates;**

makes a written request to the rating bureau or insurer, the rating bureau or insurer shall, within a reasonable time after receiving the request and a reasonable charge determined by the rating bureau or insurer, furnish to the insured or an authorized representative of the insured all information on which the rate is based.

(b) If an insured makes a written request to:

- (1) a rating bureau; or**
- (2) an insurer that makes the insurer's own rates;**

for a review of the manner in which the rating bureau's or insurer's rating system is applied in connection with the insurance issued to the insured, the rating bureau or insurer shall provide a reasonable means by which the insured or the insured's authorized

representative may be heard without requiring the insured or the insured's authorized representative to leave Indiana.

(c) If a rating bureau or insurer fails to grant or reject a request described in subsection (b) within thirty (30) days after receiving the request, the insured that made the request may proceed as if the request had been rejected. A party affected by the rating bureau's or insurer's action on the request may, within thirty (30) days after receiving written notice of the action, appeal to the commissioner who, after a hearing held at least ten (10) days after written notice of the hearing is provided to the party and to the rating bureau or insurer, may affirm or reverse the action.

Sec. 17. (a) The commissioner shall adopt rules under IC 4-22-2, including:

- (1) statistical plans reasonably adopted to the rating system on file with the department:**

(A) for use of each insurer in recording and reporting the insurer's loss and national expense experience; and

(B) to make available the experience of all insurers at least annually in a form and detail that is useful to the commissioner in determining whether rating systems comply with the standards set forth in this chapter; and

(2) specifying criteria for what is considered to be reasonable with respect to a margin, plans, time, charge, or action established by a rating bureau or insurer under this chapter.

(b) Rules and plans adopted under subsection (a)(1) may provide for recording and reporting of expense experience items that are:

- (1) particularly applicable to Indiana; and**
- (2) not susceptible of determination by a prorating of national expense experience.**

(c) In adopting the rules and plans under subsection (a)(1), the commissioner shall consider the rating system on file with the department and the rules and form of the plans used for rating systems in other states.

(d) An insurer is not required to record or report the insurer's loss experience on a classification basis that is inconsistent with the rating system filed by the insurer.

(e) The commissioner may designate a rating bureau or one (1) or more other persons to assist in gathering and compiling experiences described in this section. Subject to rules adopted by the commissioner, experience compilations must be available to insurers and rating bureaus.

Sec. 18. (a) The commissioner may adopt rules under IC 4-22-2, including plans for the interchange of data necessary for the application of rating plans.

(b) The commissioner, a rating bureau licensed under this chapter, and insurers may:

- (1) exchange information and experience data; and**
- (2) consult;**

with insurance supervisory officials, insurers, and rating bureaus in other states concerning rate making and the application of rating systems.

Sec. 19. (a) The commissioner:

(1) shall, at least every five (5) years, perform an examination of a rating bureau licensed under this chapter; and

(2) may, in the discretion of the commissioner, perform an examination of an advisory organization and each entity that is a member of an advisory organization.

(b) The reasonable costs of an examination described in subsection (a) must, upon receipt of a detailed account of the costs, be paid by the rating bureau, advisory organization, or entity that is examined.

(c) The officers, manager, agents, and employees of a person examined under this section:

(1) may be examined at any time under oath; and

(2) shall exhibit all books, records, accounts, documents, or agreements governing the person's method of operation.

(d) The commissioner shall:

(1) furnish two (2) copies of the examination report to the person examined under this section; and

(2) notify the person examined under this section that the person may, within twenty (20) days after receiving the copies under subdivision (1), request a hearing concerning the report.

(e) The following apply to publication of an examination report:

(1) If a hearing is requested under subsection (d), the commissioner shall not make the examination report available to the public until after the hearing is held.

(2) After an examination report may be made available to the public under subdivision (1), the commissioner may continue to withhold the examination report from publication for any period determined appropriate by the commissioner.

(f) An examination report that is available to the public is:

(1) admissible in evidence in an action brought by the

commissioner against the person examined under this section or the person's officers or agents; and

(2) prima facie evidence of the facts stated in the examination report.

(g) In lieu of an examination conducted under this section, the commissioner may accept the report of an examination made by the insurance supervisory official of another state under the laws of the other state.

Sec. 20. (a) An advisory organization shall file the following with the commissioner:

(1) A copy of the advisory organization's constitution, articles of agreement or association or certificate of incorporation, and bylaws, rules, and regulations governing the advisory organization's activities.

(2) A list of the advisory organization's members.

(3) The name and address of an Indiana resident upon whom:

(A) notice and orders of the commissioner; and

(B) process;

may be served.

(4) An agreement that the commissioner may examine the advisory organization under section 19 of this chapter.

(b) If, after notice and hearing, the commissioner determines that an advisory organization has, in furnishing information or assistance to insurers, acted in a manner that is unfair, unreasonable, or otherwise inconsistent with this chapter, the commissioner may issue a written order specifying in what respects the act is unfair, unreasonable, or otherwise inconsistent with this chapter and requiring the discontinuance of the act.

(c) A rating bureau or an insurer that makes the insurer's own filings shall not:

(1) support a filing with statistics furnished; or

(2) adopt rate making recommendations made;

by an advisory organization that is not in compliance with this section. The commissioner may issue an order requiring the discontinuance of a violation of this subsection.

Sec. 21. (a) The commissioner, after a hearing held at least ten (10) days after the rating bureau or insurer receives written notice under section 20 of this chapter of the order specifying the alleged violation:

(1) may suspend the license of a rating bureau or insurer that fails to comply with an order of the commissioner within the time specified in the order; and

(2) shall not suspend the license of a rating bureau or insurer that fails to comply with an order until:

(A) the time prescribed for an appeal of the order under IC 4-21.5 has expired; or

(B) if an appeal has been taken, the order is affirmed.

(b) A suspension under this section is effective:

(1) for the period determined by the commissioner; or

(2) until the order upon which the suspension is based is modified, rescinded, or reversed.

Sec. 22. (a) An order, hearing, or appeal under this chapter is governed by IC 4-21.5.

(b) An insurer, advisory organization, or rating bureau that is aggrieved by an order or decision of the commissioner that was made without a hearing may appeal the order or decision under IC 4-21.5.

Sec. 23. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.