

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1206

AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 6-3-2-2.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]:
Sec. 2.8. Notwithstanding any provision of IC 6-3-1 through IC 6-3-7, there shall be no tax on the adjusted gross income of the following:

- (1) Any organization described in Section 501(a) of the Internal Revenue Code, except that any income of such organization which is subject to income tax under the Internal Revenue Code shall be subject to the tax under IC 6-3-1 through IC 6-3-7.
- (2) Any corporation which is exempt from income tax under Section 1363 of the Internal Revenue Code and which complies with the requirements of IC 6-3-4-13. However, income of a corporation described under this subdivision that is subject to income tax under the Internal Revenue Code is subject to the tax under IC 6-3-1 through IC 6-3-7. A corporation will not lose its exemption under this section because it fails to comply with IC 6-3-4-13 but it will be subject to the penalties provided by IC 6-8.1-10.
- (3) Banks and trust companies, national banking associations, savings banks, building and loan associations, and savings and loan associations.
- (4) Insurance companies subject to tax under **any of the**



following:

(A) IC 27-1-18-2, including a domestic insurance company that elects to be taxed under IC 27-1-18-2.

(B) IC 27-1-2-2.3.

(5) International banking facilities (as defined in Regulation D of the Board of Governors of the Federal Reserve System (12 CFR 204)).

SECTION 2. IC 6-5.5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 7. Notwithstanding any other provision of this article, there is no tax imposed on the adjusted gross income or apportioned income of the following:

(1) Insurance companies subject to the tax under **any of the following:**

(A) IC 27-1-18-2. ~~or~~

(B) IC 27-1-2-2.3.

(C) IC 6-3.

(2) International banking facilities (as defined in Regulation D of the Board of Governors of the Federal Reserve System).

(3) Any corporation that is exempt from income tax under Section 1363 of the Internal Revenue Code.

(4) Any corporation exempt from federal income taxation under the Internal Revenue Code, except for the corporation's unrelated business income. However, this exemption does not apply to a corporation exempt from federal income taxation under Section 501(c)(14) of the Internal Revenue Code.

SECTION 3. IC 27-1-2-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013 (RETROACTIVE)]: Sec. 2.3. (a) As used in this section, "captive insurer" means a foreign company or an alien company:**

(1) that is supervised in the foreign or alien jurisdiction;

(2) that is owned by a person that conducts business in Indiana;

(3) whose exclusive purpose is to insure property and casualty risks of:

(A) the parent entity described in subdivision (2);

(B) affiliates of the parent entity; or

(C) a controlled unaffiliated business;

which may include reinsuring (through risk-sharing arrangements) property and casualty risks insured by other foreign companies or alien companies described in subdivision



- (1); and
 - (4) that has not more than two million dollars (\$2,000,000) of annual direct written premium.
- (b) As used in this section, "controlled unaffiliated business" means a business:
 - (1) that:
 - (A) is not an affiliate of; and
 - (B) has a contractual relationship with;
a parent entity described in subsection (a)(2) or an affiliate of the parent entity; and
 - (2) the risks of which are managed by a captive insurer.
- (c) Except as provided in this section, this article does not apply to a captive insurer.
- (d) A captive insurer that is doing business in Indiana:
 - (1) is not required to obtain a certificate of authority in Indiana;
 - (2) shall register with the commissioner; and
 - (3) shall, for each calendar year after 2012 in which the captive insurer is doing business in Indiana, pay into the treasury of this state a tax of two thousand five hundred dollars (\$2,500).
- (e) A captive insurer that is required to pay the tax imposed for a calendar year under subsection (d)(3) shall pay the tax as follows:
 - (1) For a tax imposed under subsection (d)(3) for calendar year 2013, the captive insurer shall pay the tax before July 1, 2014.
 - (2) For a tax imposed under subsection (d)(3) for a calendar year after 2013, the captive insurer shall pay the tax before April 15 of the following calendar year.
- (f) The state and a political subdivision of the state shall not impose a license fee or privilege or other tax on a captive insurer, except the following:
 - (1) The tax described in subsection (d)(3).
 - (2) An applicable tax on real and tangible personal property of the captive insurer.

SECTION 4. IC 27-1-12-11, AS AMENDED BY P.L.276-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. (a) After the department has ascertained the net reserve value of all policies under IC 27-1-12.8-18 or the reserve liabilities under IC 27-1-12.8 of any life insurance company organized and doing business in this state, the department shall notify said company of the amount or amounts thereof. Within sixty (60) days after



the date of such notification, the officers of such company shall deposit with the department, solely for the security and benefit of all its policyholders, assets in an amount, invested in accordance with section 2 of this chapter (except paragraph 20 of section 2(b) of this chapter) which together with the assets already deposited with the department and such additional assets as may be deposited by said company with other states or governments, pursuant to the requirements of the laws of such other states or governments in which said company is doing business, shall be not less than the lesser of the amount of such reserve value or reserve liabilities or the amount provided under subsection (f). No life insurance company organized under this article or any other law of this state shall be required to make such deposit until the amount prescribed by this subsection exceeds the amount deposited by said company under IC 27-1-6-14 or IC 27-1-6-15. Investments in real estate shall be deposited in the form of satisfactory evidences of ownership. The deposit requirement in relation to policy loans and bank deposits shall be considered fulfilled by the inclusion of such item in the company's annual statement, but subject to the right of the company at any time, and the obligation of the company on demand of the department, to file with the department a certificate as to the amount of such item.

(b) If the department in the course of the year ascertains that the net reserve value of a company's policies under IC 27-1-12.8-18 or its reserve liabilities under IC 27-1-12.8 exceeds such company's deposits as required by subsection (a), it may require such company within sixty (60) days to increase its deposit to the required amount.

(c) Nothing in this article shall prevent the deposit of bonds, mortgages, or other securities which meet the investment requirements of a foreign or alien state or country, to an amount not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such state or country. If, pursuant to the law of a foreign or alien state or country in which an Indiana life insurance company is doing business, securities belonging to such a company are required to be deposited within the boundaries of such foreign or alien state or country, credit for the amount of such deposit, not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such foreign or alien state or country, may be taken by the company as an offset against its deposits required under this article.

(d) If, pursuant to the law of a foreign or alien state or country, a life insurance company domiciled therein is not permitted a reserve credit for reserves maintained by a reinsurer foreign to such a state or



country, except on the condition that the amount of such reserve be deposited with the insurance supervisory official of such state or country, a deposit credit for the amount of such reserves so deposited shall be allowed a domestic life insurance company accepting reinsurance from companies domiciled in such state or country.

(e) Any deposit of assets with the department pursuant to any law superseded by this chapter shall, prior to the first deposit date contemplated in subsection (a), be continued with the department and otherwise be subject to this section.

(f) The amount of the deposit, except as otherwise provided in subsection (a), shall be one million dollars (\$1,000,000) excluding policy loans and bank deposits, or such greater amount as the department deems necessary to protect the interests of the policyholders of a particular company by an order to the company to deposit additional amounts under this section.

(g) Except for a company that maintains a deposit in the amount specified in subsection (f), each company:

(1) must report to the department each new asset acquisition to establish its eligibility for investment under the numbered categories of permissible investments under section 2 of this chapter at such regular intervals, within the time limit following each interval and on the forms as the department may require, without complying with IC 4-22-2; and

(2) when ordered by the department, shall make any additional report relating to:

(A) the category of eligibility, the characteristics, or the amount of any investment; or

(B) the amount of the assets of the company in any category; calculated under the rules applied for annual statement purposes.

SECTION 5. IC 27-1-13-16, AS AMENDED BY P.L.6-2012, SECTION 186, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 16. (a) This section applies to a policy of insurance that:

(1) covers first party loss to property located in Indiana; and

(2) insures against loss or damage to:

(A) real property consisting of not more than four (4) residential units, one (1) of which is the principal place of residence of the named insured; or

(B) personal property in which the named insured has an insurable interest and that is used within a residential dwelling for personal, family, or household purposes.

(b) An insurer that reduces, restricts, or removes, through a rider or



an endorsement, coverage provided by a policy of insurance must provide to the named insured written notice, through the United States mail or by electronic means, of the changes to the policy. The written notice required by this subsection must:

- (1) be part of a document that is separate from the rider or endorsement;
- (2) be printed in at least 12 point type, 1 point leaded;
- (3) consist of text that achieves a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner as provided by IC 27-1-26-6;
- (4) identify the forms, provisions, or endorsements that are changed;
- (5) indicate that the named insured may contact the servicing insurance producer for the policy, if any, or the insurer for assistance with any questions concerning the policy changes;
- (6) indicate whether a premium adjustment will result from the policy changes; and
- (7) set forth any options available to the named insured to repurchase the coverage that has been reduced, restricted, or removed.

~~(c)~~ If the notice required under subsection (b) is sent through the United States mail, the outside of the envelope used to mail the notice must contain the following statement in at least 14 point type: "Coverage has been reduced, restricted, or removed from your policy."

~~(d)~~ (c) The insurer bears the burden to prove that notice was sent to the named insured in accordance with this section. If the notice is sent through the United States mail, proof of mailing as described in IC 27-7-6-7 is sufficient proof of the notice.

~~(e)~~ (d) The commissioner may adopt rules under IC 4-22-2 to implement this section.

SECTION 6. IC 27-1-17-4, AS AMENDED BY P.L.193-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Whenever a foreign or an alien insurance company desires to be admitted to do an insurance business in this state, it shall execute in the English language and present the following to the department, at its office, accompanied by the fees prescribed by law:

- (1) A copy of its articles of incorporation or association, with all amendments thereto, duly authenticated by the proper officer of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in



the United States.

(2) An application for admission, executed in the manner provided in this chapter, setting forth:

- (A) the name of such company;
- (B) the location of its principal office or place of business without this state;
- (C) the names of the states in which it has been admitted or qualified to do business;
- (D) the character of insurance business under its articles of incorporation or association which it intends to transact in this state, which must conform to the class or classes set forth in the provisions of IC 27-1-5-1;
- (E) the total authorized capital stock of the company and the amount thereof issued and outstanding, and the surplus required of such company by the laws of the state, country, province, or government under which it is organized, or the state in which it is domiciled in the United States, if a stock company, which shall equal at least the requirements set forth in section 5(a) of this chapter;
- (F) the total amount of assets and the surplus of assets over all its liabilities, if other than a stock company, which shall equal at least the requirements set forth in section 5(b) of this chapter;
- (G) if an alien company, the surplus of assets invested according to the laws of the state in the United States where it has its deposit, which shall equal at least the requirements set forth in section 5(c) of this chapter; and
- (H) such further and additional information as the department may from time to time require.

The application shall be signed, ~~in duplicate~~, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified under oath by the officers signing the same.

(3) A statement of its financial condition and business, in the form prescribed by law for annual statements, signed and sworn to by the president or secretary or other principal officers of the company; provided, however, that an alien company shall also furnish a separate statement comprising only its condition and business in the United States, which shall be signed and sworn to by its United States manager.

(4) A copy of the last report of examination certified to by the insurance commissioner or other proper supervisory official of the



state in which such company is domiciled; provided, however, that the commissioner may cause an examination to be made of the condition and affairs of such company before authority to transact business in this state is given.

(5) A certificate from the proper official of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States, that it is duly organized or incorporated under those laws and authorized to make the kind or kinds of insurance which it proposes to make in this state.

(6) A copy of its bylaws or regulations, if any, certified to by the secretary or similar officer of the insurance company.

(7) A duly executed power of attorney in a form prescribed by the department which constitutes and appoints an individual or a corporate resident of Indiana, or an authorized Indiana insurer, as the insurance company's agent, its true and lawful attorney upon whom, except as provided in section 4.2 of this chapter, all lawful processes in any action in law or in equity against it shall be served. Such power of attorney shall contain an agreement by the insurance company that any lawful process against it which may be served upon the agent as its attorney shall be of the same force and validity as if served upon the insurance company and that such power of attorney shall continue in force and be irrevocable so long as any liability of the insurance company remains outstanding in this state. Such power of attorney shall be executed by the president and secretary of the insurance company or other duly authorized officers under its seal and shall be accompanied by a certified copy of the resolution of the board of directors of the company making said appointment and authorizing the execution of said power of attorney. Service of any lawful process shall be by delivering to and leaving with the agent two (2) copies of such process, with copy of the pertinent complaint attached. The agent shall forthwith transmit to the defendant company at its last known principal place of business by registered or certified mail, return receipt requested, one (1) of the copies of such process, with complaint attached, the other copy to be retained in a record which shall show all process served upon and transmitted by ~~him~~: **the agent**. Such service shall be sufficient provided the returned receipt or, if the defendant company shall refuse to accept such mailing, the registered mail together with an affidavit of plaintiff or ~~his~~ **the plaintiff's** attorney stating that service was made upon the agent and forwarded as above set forth but that



such mail was returned by the post office department is filed with the court. The agent shall make information and receipts available to plaintiff, defendant or their attorneys. No plaintiff or complainant shall be entitled to a judgment by default based on service authorized by this section until the expiration of at least thirty (30) days from the date on which either the post office receipt or the unclaimed mail together with affidavit is filed with the court. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any company in any other manner permitted by law.

(8) Proof which satisfies the department that it has complied with the financial requirements imposed in this chapter upon foreign and alien insurance companies which transact business in this state and that it is entitled to public confidence and that its admission to transact business in this state will not be prejudicial to public interest.

SECTION 7. IC 27-1-23-3, AS AMENDED BY P.L.81-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

- (1) this section;
- (2) section 4(a) and 4(c) of this chapter; and
- (3) section 4(b) of this chapter or a provision such as the following:

Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each such change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by ~~March 15~~ **July 1** of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of an insurance holding company system but not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurer with the insurance



regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which shall contain current information about all of the following:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(2) The identity of every member of the insurance holding company system.

(3) The following agreements in force, relationships subsisting, and transactions that are currently outstanding or that have occurred during the last calendar year between such insurer and its affiliates:

(i) ~~(A)~~ **(A)** loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) ~~(B)~~ **(B)** purchases, sales, or exchanges of assets;

(iii) ~~(C)~~ **(C)** transactions not in the ordinary course of business;

(iv) ~~(D)~~ **(D)** guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) ~~(E)~~ **(E)** all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; ~~and~~

(vi) ~~(F)~~ **(F)** reinsurance agreements covering all or substantially all of one **(1)** or more lines of insurance of the ceding insurer;

(vii) ~~(G)~~ **(G)** dividends and other distributions to shareholders; and

(viii) ~~(H)~~ **(H)** consolidated tax allocation agreements.

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(5) If requested by the commissioner, financial statements of the insurance holding company system, the parent corporation of the insurer, or all affiliates, including annual audited financial statements filed with the federal Securities and Exchange Commission under the Securities Act of 1933 or the federal Securities Exchange Act of 1934, both as amended.

(6) Statements reflecting that the insurer's:

(A) board of directors oversees corporate governance and internal controls; and



- (B) officers or senior management have approved and implemented and maintain and monitor corporate governance and internal control procedures.
- (7) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms prescribed by the commissioner.
- (8) Other information that the commissioner requires under rules adopted under IC 4-22-2.
- (c) Every registration statement must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- (d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.
- (e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms prescribed by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition.
- (f) A person within an insurance holding company system subject to registration under this chapter shall provide complete and accurate information to an insurer when that information is reasonably necessary to enable the insurer to comply with this chapter.
- (g) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is subject to the provisions of this section.
- (h) The commissioner may require or allow two (2) or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
- (i) The commissioner may allow an insurer which is authorized to do business in this state and which is a member of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.
- (j) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner



by rule or order shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such disclaimer. A disclaimer of affiliation is considered to have been granted unless the commissioner, less than thirty (30) days after receiving a disclaimer, notifies the person filing the disclaimer that the disclaimer is disallowed. The commissioner shall disallow such disclaimer only after furnishing all parties in interest with notice and opportunity to be heard.

(l) The person that ultimately controls an insurer that is subject to registration shall file with the lead state commissioner of the insurance holding company system (as determined by the procedures in the Financial Analysis Handbook adopted by the NAIC) an annual enterprise risk report that identifies, to the best of the person's knowledge, the material risks within the insurance holding company system that could pose enterprise risk to the insurer.

(m) The commissioner may impose on a person a civil penalty of one hundred dollars (\$100) per day that the person fails to file, within the period specified, a:

(1) registration statement; or

(2) summary of a registration statement or enterprise risk filing; required by this section. The commissioner shall deposit a civil penalty collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

SECTION 8. IC 27-1-23.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 23.5. Risk Management and Own Risk and Solvency Assessment

Sec. 1. This chapter applies beginning January 1, 2015.

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 27-1-23 apply throughout this chapter.

Sec. 3. As used in this chapter, "insurance group", for purposes of conducting an ORSA, means insurers and affiliates of an



insurance holding company system (as defined in IC 27-1-23-1).

Sec. 4. As used in this chapter, "insurer" has the same meaning as set forth in IC 27-1-2-3, except that the term:

- (1) refers only to domestic insurers (as defined in IC 27-1-36-8); and
- (2) does not include agencies, authorities, or instrumentalities of the United States, possessions and territories of the United States, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Sec. 5. As used in this chapter, "ORSA" or "own risk and solvency assessment" means a confidential internal assessment:

- (1) that is:
 - (A) appropriate to the nature, scale, and complexity of; and
 - (B) conducted by; an insurer or insurance group; and
- (2) of the:
 - (A) material and relevant risks associated with the insurer or insurance group's current business plan; and
 - (B) sufficiency of capital resources to support the risks described in clause (A).

Sec. 6. (a) As used in this chapter, "ORSA guidance manual" refers to the current version of the Own Risk and Solvency Assessment Guidance Manual of the NAIC.

(b) As used in subsection (a), "current version" means the version containing:

- (1) all changes that were made before; and
- (2) no changes that were made on or after;

January 1 of the current calendar year.

Sec. 7. As used in this chapter, "ORSA summary report" means a confidential, high level summary of an insurer or insurance group's ORSA.

Sec. 8. (a) An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting concerning the insurer's material and relevant risks.

(b) If an insurance group of which an insurer is a member maintains a risk management framework described in subsection (a) that applies to the operations of the insurer, the insurer is considered to be in compliance with subsection (a).

Sec. 9. Subject to section 11 of this chapter, an:

- (1) insurer; or



(2) insurance group of which an insurer is a member; shall, at any time when significant changes occur to the risk profile of the insurer or insurance group and at least one (1) time per year, conduct an ORSA in a manner consistent with the ORSA guidance manual.

Sec. 10. (a) Upon the request of the commissioner, and not more than one (1) time per year, an insurer shall submit to the commissioner:

(1) an ORSA summary report; or
 (2) a combination of reports that together contain the information described in the ORSA guidance manual; applicable to the insurer or insurance group of which the insurer is a member.

(b) Regardless of a request from the commissioner, if the commissioner is the lead state commissioner of an insurance group of which an insurer is a member (as determined by the procedures in the NAIC Financial Analysis Handbook), the insurer shall submit a report described in subsection (a) at least one (1) time per year.

(c) A report required by this section must include a signature of the insurer's or insurance group's chief risk officer, or another executive who has responsibility for the oversight of the insurer's enterprise risk management process, attesting that:

(1) to the best of the officer's or executive's belief and knowledge the insurer applies the enterprise risk management process described in the ORSA summary report; and
 (2) a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the insurer's board of directors.

(d) If an insurer or another member of an insurance group of which the insurer is a member submits to the commissioner the most recent report that:

(1) was provided to the:
 (A) commissioner of another state; or
 (B) regulatory authority of an alien jurisdiction;
 (2) is substantially similar to an ORSA summary report; and
 (3) contains information that is comparable to the information described in the ORSA guidance manual;

the insurer is considered to have satisfied the requirements of this section.

(e) If a report described in subsection (d) is completed in a language other than English, a translation of the report into the



English language must be submitted with the report.

Sec. 11. (a) Except as otherwise provided in this section, an insurer is exempt from the requirements of this chapter if:

(1) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than five hundred million dollars (\$500,000,000); and

(2) the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than one billion dollars (\$1,000,000,000).

(b) If:

(1) an insurer qualifies under subsection (a)(1) for exemption from the requirements of this chapter; and

(2) the insurance group of which the insurer is a member does not qualify for exemption under subsection (a)(2);

an ORSA summary report required by section 10 of this chapter must include every insurer that is a member of the insurance group.

(c) If:

(1) an insurance group described in subsection (b) submits more than one (1) ORSA summary report for a combination of insurers; and

(2) the combination of ORSA summary reports submitted as described in subdivision (1) includes every insurer that is a member of the insurance group;

the insurance group is considered to be in compliance with subsection (b).

(d) If:

(1) an insurer does not qualify under subsection (a)(1) for exemption from the requirements of this chapter; and

(2) the insurance group of which the insurer is a member qualifies for exemption under subsection (a)(2);

the only ORSA summary report that is required under section 10 of this chapter is the report that applies to the insurer.

(e) An insurer that does not qualify under subsection (a) for exemption from the requirements of this chapter may apply to the commissioner for a waiver from the requirements of this chapter



based on unique circumstances. In deciding whether to grant an insurer's request for a waiver, the commissioner:

(1) may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member; and

(2) shall, if the insurer is part of an insurance group with insurers domiciled in more than one (1) state, coordinate with the:

(A) lead state commissioner of the insurance group (as determined by the procedures in the NAIC Financial Analysis Handbook); and

(B) other domiciliary commissioners;

in considering whether to grant the insurer's request for a waiver.

(f) The commissioner may, regardless of an insurer's qualification under this section for exemption from the requirements of this chapter, require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report if one (1) of the following applies:

(1) If unique circumstances exist, as determined by the commissioner, including the following:

(A) The type and volume of business written by the insurer.

(B) The insurer's ownership and organizational structure.

(C) The request of a federal agency.

(D) The request of an international supervisor.

(2) If the insurer:

(A) has authorized control level RBC for a company action level event under IC 27-1-36;

(B) meets at least one (1) of the standards of an insurer considered to be in hazardous financial condition according to rules adopted by the department under IC 27-1-3-7; or

(C) exhibits other qualities of a troubled insurer, as determined by the commissioner.

(g) If an insurer ceases to qualify for an exemption under this section due to changes in premium, as reflected in:

(1) the insurer's most recent annual statement; or

(2) the most recent annual statements of the insurers that are members of the insurance group of which the insurer is a member;



the insurer must meet the requirements of this chapter not later than one (1) year after the date on which the premium change occurs.

Sec. 12. (a) Except as provided in subsection (b), an ORSA summary report must be prepared in a manner consistent with the ORSA guidance manual. Documentation and supporting information must be maintained and made available upon examination or request of the commissioner.

(b) The commissioner's review of an ORSA summary report, and any requests for additional information, must be made in a manner similar to the procedures used by the commissioner in the analysis and examination of multistate or global insurers and insurance groups.

Sec. 13. (a) Documents, materials, and other information related to an ORSA, including an ORSA summary report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or another person under this chapter, are:

- (1)** considered to be proprietary and contain trade secrets;
- (2)** confidential and privileged;
- (3)** not subject to subpoena; and
- (4)** not subject to discovery or admissible in evidence in a private civil action.

(b) The commissioner may:

- (1)** use the documents, materials, and other information described in subsection (a) in relation to a regulatory or legal action brought as part of the commissioner's duties; and
- (2)** otherwise make the documents, materials, and other information public only with the prior written consent of the insurer or insurance group.

(c) The commissioner, and any other person:

- (1)** who receives documents, materials, or other information related to an ORSA while acting under the authority of the commissioner; or
- (2)** with whom the documents, materials, or other information are shared;

under this chapter is not permitted or required to testify in a private civil action concerning any documents, materials, or other information described in subsection (a).

(d) The commissioner may do the following:

- (1)** Upon request, share all documents, materials, and other information described in subsection (a) with the following if



the recipient agrees in writing, and provides written verification that the recipient has the legal authority, to maintain the confidential and privileged status of the documents, materials, and other information:

- (A) Other state, federal, and international financial regulatory agencies.
- (B) The NAIC.
- (C) Members of a supervisory college.
- (D) A third party consultant designated by the commissioner.

(2) Receive documents, materials, and other information described in subsection (a) from:

- (A) regulatory officials of domestic or foreign jurisdictions;
- (B) members of a supervisory college; and
- (C) the NAIC;

if the commissioner maintains the confidential or privileged status of the documents, materials, and other information that are received with notice or the understanding that the documents, materials, and other information are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, and other information.

(e) The commissioner shall enter into a written agreement with the NAIC or a third party consultant governing sharing and use of information provided under this chapter, including the following:

(1) Procedures and protocols concerning the confidentiality and security of information shared:

- (A) with the NAIC or a third party consultant under this chapter; and
- (B) by the NAIC with regulators of other states in which insurers that are members of an insurance group are domiciled.

(2) A statement that the recipient agrees in writing, and provides written verification that the recipient has the legal authority, to maintain the confidential and privileged status of the documents, materials, and other information.

(3) A statement that, with respect to information shared with the NAIC or a third party consultant under this chapter:

- (A) the commissioner maintains ownership of the information; and
- (B) the use of the information is subject to the direction of the commissioner.



(4) A statement that the NAIC or a third party consultant may not store information shared under this chapter in a permanent data base after the underlying analysis is completed.

(5) A requirement that, if confidential information of an insurer that is in the possession of the NAIC or a third party consultant under this chapter is subject to a request or subpoena to the NAIC or third party consultant for production or disclosure, the NAIC or a third party consultant will provide prompt notice to the insurer.

(6) A requirement that the NAIC or a third party consultant will allow intervention by an insurer in a judicial or administrative action under which the NAIC or third party consultant may be required to disclose confidential information concerning the insurer that has been shared with the NAIC or third party consultant under this chapter.

(7) If the written agreement is with a third party consultant, a statement that the insurer's written consent is required for the sharing of the information with the third party consultant.

(f) The sharing of information by the commissioner under this chapter is not a delegation of regulatory authority. The commissioner is solely responsible for the administration, implementation, and enforcement of this chapter.

(g) Disclosure to or sharing by the commissioner of documents, materials, or other information under this chapter is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information.

(h) Documents, materials, and other information in the possession or control of the NAIC or a third party consultant under this chapter are:

- (1) confidential and privileged;
- (2) not subject to subpoena; and
- (3) not discoverable or admissible in evidence in a private civil action.

Sec. 14. (a) An insurer that fails, without just cause (as determined by the commissioner), to timely file an ORSA summary report as required by this chapter shall, after notice and hearing under IC 4-21.5, pay a civil penalty of one hundred dollars (\$100) for each day of noncompliance, not to exceed ten thousand dollars (\$10,000).

(b) The commissioner may reduce a penalty imposed under subsection (a) if the insurer demonstrates to the commissioner that



the imposition of the penalty would constitute a financial hardship to the insurer.

(c) A civil penalty collected under this section shall be deposited in the department of insurance fund established by IC 27-1-3-28.

SECTION 9. IC 27-1-43-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 9. An insurance producer is not liable for harm or injury that occurs in relation to electronic delivery or nondelivery of a notice or document covered under this chapter.**

SECTION 10. IC 27-1-43.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 43.2. Service Contracts

Sec. 1. (a) As used in this chapter, "ancillary protection product" means a protective chemical, substance, device, or system that is:

- (1) installed on or applied to a motor vehicle;
- (2) formulated or designed to:
 - (A) prevent; or
 - (B) minimize the likelihood of;

a specified loss or damage to a motor vehicle from a specific cause; and
- (3) sold with a service contract under which the provider agrees to pay specified incidental costs incurred by the holder as a result of the failure of the chemical, substance, device, or system to prevent or minimize the loss or damage described in subdivision (2).

(b) As used in this chapter, "ancillary protection product" includes the following:

- (1) Protective chemicals.
- (2) Alarm systems.
- (3) Body part marking products.
- (4) Steering locks.
- (5) Window etching products.
- (6) Pedal and ignition locks.
- (7) Fuel and ignition kill switches.
- (8) Electronic, radio, and satellite tracking devices.

(c) As used in this chapter, "ancillary protection product" does not include the following:

- (1) Fuel additives.
- (2) Oil additives.
- (3) Other chemical products applied to the engine,



transmission, or fuel system of a motor vehicle.

Sec. 2. As used in this chapter, "holder" means a person who is entitled to services or indemnification under a service contract.

Sec. 3. (a) As used in this chapter, "incidental cost" means an expense that is:

- (1) specified in a service contract that applies to a motor vehicle;
- (2) incurred by the holder due to the failure of an ancillary protection product to perform as provided in the service contract sold with the ancillary protection product; and
- (3) reimbursed to the holder:
 - (A) as a fixed amount specified in the service contract; or
 - (B) by use of a formula that itemizes specific incurred expenses.

(b) "Incidental cost" includes the following:

- (1) Insurance policy deductibles.
- (2) Rental vehicle charges.
- (3) The difference between the actual value of a stolen motor vehicle at the time of theft and the cost of a replacement motor vehicle.
- (4) Sales tax.
- (5) Registration fees.
- (6) Transaction fees.
- (7) Mechanical inspection fees.
- (8) Expense incurred due to a defective part or mechanical or electrical breakdown.
- (9) Expense incurred for labor.
- (10) Expense incurred for other remedial measures, including a repair, a replacement, or repetition of a service.

Sec. 4. As used in this chapter, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

Sec. 5. As used in this chapter, "provider" means a person who is contractually obligated to a holder under a service contract.

Sec. 6. (a) As used in this chapter, "road hazard" means a hazard encountered by a motor vehicle in normal driving conditions.

(b) "Road hazard" includes the following:

- (1) A pothole.
- (2) A rock.
- (3) Wood debris.
- (4) Metal parts.
- (5) Glass.



- (6) Plastic.
- (7) A curb.
- (8) A composite scrap.

Sec. 7. (a) As used in this chapter, "service contract" means an agreement:

- (1) that is effective for a specified period; and
- (2) under which a provider:
 - (A) receives consideration that is separate from the lease or purchase price of a motor vehicle; and
 - (B) agrees to provide the performance, or indemnification for the cost of performance, of the repair, replacement, or maintenance of a motor vehicle related to the operational or structural failure of the motor vehicle due to a defect in materials or workmanship, accidental damage, normal wear and tear, or damage resulting from a power surge or interruption.

A service contract may also provide for the incidental payment of indemnity under limited circumstances, including indemnity for towing, temporary replacement motor vehicle rental, and emergency road service.

(b) The repair, replacement, or maintenance described in subsection (a)(2)(B) includes the following:

- (1) Repair or replacement of tires or wheels on a motor vehicle damaged as a result of road hazards.
- (2) Removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting.
- (3) Repair of chips or cracks in, or replacement of, motor vehicle windshields as a result of damage caused by road hazards.
- (4) Replacement of an inoperable, lost, or stolen motor vehicle key or keyfob.
- (5) Payment of specified incidental costs resulting from failure of an ancillary protection product to perform as specified.
- (6) Payment related to other products and services approved by the commissioner and consistent with this chapter.

(c) A service contract may not include coverage:

- (1) for the:
 - (A) repair of damage to;
 - (B) replacement of; or
 - (C) repair of damage to and replacement of;



the interior surfaces of a vehicle; or

(2) for the:

- (A) repair of damage to;
 - (B) replacement of; or
 - (C) repair of damage to and replacement of;
- the exterior paint or finish of a vehicle.

However, coverage described in subdivision (1) or (2) may be offered in connection with the sale of an ancillary protection product as defined in section 1 of this chapter.

(d) "Service contract" does not include an insurance policy that:

- (1) is issued by an insurer authorized to engage in the insurance business in Indiana; and
- (2) provides coverage for repair, replacement, or maintenance described in subsection (a)(2)(B).

Sec. 8. As used in this chapter, "service contract reimbursement policy" means a policy of insurance that provides coverage for one (1) of the following:

- (1) All obligations and liabilities incurred by a provider under a service contract issued by the provider in Indiana.
- (2) In the event of the provider's nonperformance under a service contract issued by the provider in Indiana, performance of all obligations:
 - (A) of the provider under the service contract; and
 - (B) that the provider did not perform.

Sec. 9. As used in this chapter, "warranty" means a guarantee that:

- (1) is made:
 - (A) solely by the manufacturer, importer, or seller of property or services; and
 - (B) without consideration;
- (2) is not negotiated or separated from the sale of the property or services;
- (3) is incidental to the sale of the property or services; and
- (4) the person making the guarantee will indemnify the warranty holder for:
 - (A) defective parts;
 - (B) mechanical or electrical failure;
 - (C) labor; or
 - (D) other remedial measures, including repair or replacement of the property or repetition of services.

Sec. 10. (a) A service contract:

- (1) is not insurance; and



(2) except as provided in this chapter, is not regulated under IC 27.

(b) The authority of the commissioner under this chapter is in addition to all other authority of the commissioner under this title.

Sec. 11. (a) Except as provided in section 14 of this chapter, a service contract may not be offered, sold, or issued in Indiana unless the provider complies with one (1) of the following subdivisions:

(1) All of the following conditions are met:

(A) The provider is insured under a service contract reimbursement policy issued by an insurer authorized to do business in Indiana.

(B) True and correct copies of the service contract reimbursement policy have been filed with the commissioner.

(C) The service contract conspicuously:

(i) states that the obligations of the provider to the holder are covered under the service contract reimbursement policy; and

(ii) sets forth the name and address of the insurer that issued the service contract reimbursement policy.

(2) The provider maintains a funded reserve account for its obligations under each service contract issued by the provider in Indiana and outstanding, subject to the following:

(A) The reserves are calculated at not less than forty percent (40%) of the gross consideration received, then minus the amount of claims paid under the service contracts.

(B) The service contract conspicuously states that the obligations of the provider under the service contract are backed by the full faith and credit of the provider.

A reserve account maintained under subdivision (2) is subject to examination and review by the commissioner under section 15 of this chapter.

(b) A filing described in subsection (a)(1)(B) is for informational purposes only and is not subject to approval by the commissioner.

Sec. 12. A service contract must meet the following requirements:

(1) Be legibly typed or printed in understandable language.

(2) Include the following disclosures:

(A) The name and address of:

(i) the provider;



- (ii) any administrator of the service contract, if different from the provider;
- (iii) the person selling the service contract; and
- (iv) if the information has been furnished by the holder, the holder.

This information may be added to the service contract at the time of sale and is not required to be preprinted on the service contract.

(B) The total purchase price and the terms under which the service contract is sold. This information may be negotiated with the holder and added to the service contract at the time of sale and is not required to be preprinted on the service contract.

(C) The existence and amount of any applicable deductible.

(D) The products and services to be provided under the service contract, including any conditions, limitations, exceptions, and exclusions.

(E) Whether the use of nonoriginal manufacturer parts is allowed.

(F) Any applicable restrictions governing the transferability of the service contract.

(G) The terms, restrictions, or conditions governing cancellation, by the provider or the holder, of the service contract before the termination or expiration date of the service contract.

(H) All obligations and duties of the holder, including any applicable:

- (i) duty to protect the motor vehicle from additional damage; and
- (ii) motor vehicle service requirements, as provided in the motor vehicle owner's manual, supplement, or guide.

(I) Whether the service contract provides for or excludes consequential damages or preexisting conditions.

(3) Conspicuously set forth the following statement or a substantially similar statement:

"This service contract is not insurance and is not subject to Indiana insurance law."

(4) If the service provider is insured under a service contract reimbursement policy under section 11(a)(1)(A) of this chapter, conspicuously state that if the provider fails to perform or make payment due under the service contract within sixty (60) days after the holder requests the



performance or payment, the holder may request the performance or payment directly from the insurer that issued the provider's service contract reimbursement policy, including any applicable requirement under the service contract that the provider refund any part of the cost of the service contract upon cancellation of the service contract.

Sec. 13. Except as provided in section 14 of this chapter, a service contract reimbursement policy may not be offered, sold, or issued in Indiana unless the service contract reimbursement policy conspicuously states that the insurer will do either of the following:

- (1) Pay all sums that the provider is obligated to pay under service contracts issued by the provider and outstanding in Indiana.
- (2) In the event of the provider's nonperformance under a service contract issued by the provider and outstanding in Indiana, perform or pay for the performance of services that the provider:
 - (A) is obligated to perform under the service contract; and
 - (B) failed to perform.

Sec. 14. Sections 11, 12(4), and 13 of this chapter do not apply to a warranty, service contract, or other agreement:

- (1) that is offered or sold by a motor vehicle dealer in connection with a motor vehicle sold by the motor vehicle dealer; and
- (2) under which the motor vehicle dealer, motor vehicle manufacturer, or affiliate of the dealer or manufacturer is obligated to perform.

Sec. 15. The commissioner may do the following:

- (1) Conduct an investigation or examination of a provider, an administrator, an insurer, or another person to enforce this chapter.
- (2) Take action that is necessary or appropriate to enforce this chapter.
- (3) If a provider violates this chapter, issue an order to do the following:
 - (A) Require a provider to cease and desist.
 - (B) Prohibit a provider from offering, issuing, or selling a service contract in Indiana.
 - (C) Impose a civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

Sec. 16. (a) If a person is aggrieved by an order issued under section 15(3) of this chapter, the person may, not more than twenty



(20) days after the effective date of the order, request a hearing under IC 4-21.5.

(b) If a person requests a hearing under subsection (a) the commissioner shall suspend the effective date of the order pending the outcome of the hearing.

(c) In a hearing requested under subsection (a), the burden is on the commissioner to show cause why the order is justified.

Sec. 17. The commissioner may commence an action in the circuit or superior court of Marion County to do the following:

- (1) Enjoin an actual or threatened violation of this chapter.**
- (2) Seek restitution on behalf of a person aggrieved by a violation of this chapter.**

Sec. 18. This chapter does not apply to the following:

- (1) A warranty provided under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 et seq.**
- (2) A contract that is effective for a specified period and under which a person agrees to:
 - (A) provide; or**
 - (B) indemnify the contract holder for; regular maintenance.****
- (3) A motor club approved under IC 9-30-2-8.**

Sec. 19. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 11. IC 34-30-2-106.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 106.7. IC 27-1-43-9 (Concerning an insurance producer in relation to electronic delivery or nondelivery of a notice or document).

SECTION 12. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

