



February 3, 2017

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## HOUSE BILL No. 1318

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DIGEST OF HB 1318 (Updated February 1, 2017 2:21 pm - DI 97)

**Citations Affected:** IC 27-1; IC 27-7; IC 27-9; IC 34-6; IC 34-13.

**Synopsis:** Insurance matters. Provides that, for purposes of the insurance law, a United States Postal Service intelligent mail bar code tracking record, a certificate of mailing, or another similar first class mail method may be used as proof of mailing. Provides that an insurance producer education course may concern sales, motivation, psychology, and time management. Allows a prospective continuing education provider to electronically submit supporting materials for a course. Amends the description of an extraordinary dividend or distribution for purposes of the insurance holding company system law. Removes requirements for independent insurance adjuster applicants to submit Social Security numbers to the department of insurance. Changes references in the Lloyds insurance law from the auditor of state to the insurance commissioner. Removes current transfer and notice requirements that apply to an insurer that transfers an insured under certain kinds of property and casualty insurance policies to an affiliate of the insurer. Applies the same exemption to commercial property and casualty, automobile insurance, and residential property policies. Allows a person to exercise certain rights connected to a netting agreement, qualified financial contract, or similar agreements without respect to any provision of IC 27. Defines "cyber liability" for purposes of the tort claims act and allows the state to purchase a policy of insurance to cover cyber liability risks. Repeals a current transfer notice requirement that applies to residential property policies. Makes technical changes.

**Effective:** Upon passage; July 1, 2017.

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### Carbaugh, Lehman, Austin, Hamm

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January 10, 2017, read first time and referred to Committee on Insurance.  
February 2, 2017, amended, reported — Do Pass.

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HB 1318—LS 6978/DI 97





February 3, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1318

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

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

1 SECTION 1. IC 27-1-3-34 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2017]: **Sec. 34. For purposes of this title, a person may use the**  
4 **following as proof of mailing:**

5 (1) **A United States Postal Service intelligent mail bar code**  
6 **tracking record, as proof of the type of mailing to which the**  
7 **record applies.**

8 (2) **A United States Postal Service certificate of mailing at the**  
9 **last known address of the recipient, as proof of the type of**  
10 **mailing to which the certificate applies.**

11 (3) **Another similar method of first class mail tracking that**  
12 **identifies the recipient, the recipient's last known address, and**  
13 **the date of mailing, as proof of mailing by first class mail.**

14 SECTION 2. IC 27-1-15.7-4, AS AMENDED BY P.L.57-2005,  
15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2017]: Sec. 4. (a) The commissioner shall approve and  
17 disapprove continuing education courses after considering

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1 recommendations made by the insurance producer education and  
 2 continuing education advisory council created under section 6 of this  
 3 chapter.

4 (b) The commissioner may not approve a course under this section  
 5 if the course:

6 (1) is designed to prepare an individual to receive an initial  
 7 license under this chapter;

8 (2) concerns only routine, basic office skills, including filing,  
 9 keyboarding, and basic computer skills;

10 ~~(3) concerns sales promotion and sales techniques;~~

11 ~~(4) concerns motivation, psychology, or time management; or~~

12 ~~(5) (3) may be completed by a licensee without supervision by an~~  
 13 instructor, unless the course involves an examination process that  
 14 is:

15 (A) completed and passed by the licensee as determined by the  
 16 provider of the course; and

17 (B) approved by the commissioner.

18 (c) The commissioner shall approve a course under this section that  
 19 is submitted for approval by an insurance trade association or  
 20 professional insurance association if:

21 (1) the objective of the course is to educate a manager or an  
 22 owner of a business entity that is required to obtain an insurance  
 23 producer license under IC 27-1-15.6-6(d);

24 (2) the course teaches insurance producer management and is  
 25 designed to result in improved efficiency in insurance producer  
 26 operations, systems use, or key functions;

27 (3) the course is designed to benefit consumers; and

28 (4) the course is not described in subsection (b).

29 (d) Approval of a continuing education course under this section  
 30 shall be for a period of not more than two (2) years.

31 (e) A prospective provider of a continuing education course shall  
 32 pay:

33 (1) a fee of forty dollars (\$40) for each course submitted for  
 34 approval of the commissioner under this section; or

35 (2) an annual fee of five hundred dollars (\$500) not later than  
 36 January 1 of a calendar year, which entitles the prospective  
 37 provider to submit an unlimited number of courses for approval  
 38 of the commissioner under this section during the calendar year.

39 The commissioner may waive all or a portion of the fee for a course  
 40 submitted under a reciprocity agreement with another state for the  
 41 approval or disapproval of continuing education courses. Fees collected  
 42 under this subsection shall be deposited in the department of insurance



1 fund established under IC 27-1-3-28.

2 **(f) A prospective provider of a continuing education course may**  
 3 **electronically deliver to the commissioner any supporting materials**  
 4 **for the course.**

5 ~~(f)~~ **(g)** The commissioner shall adopt rules under IC 4-22-2 to  
 6 establish procedures for approving continuing education courses.

7 SECTION 3. IC 27-1-23-4, AS AMENDED BY P.L.72-2016,  
 8 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 UPON PASSAGE]: Sec. 4. (a) Material transactions within an  
 10 insurance holding company system to which an insurer subject to  
 11 registration is a party shall be subject to the following standards:

12 (1) The terms shall be fair and reasonable.

13 (2) Agreements concerning cost sharing services and management  
 14 must include provisions required by the commissioner in rules  
 15 adopted under IC 4-22-2.

16 (3) The charges or fees for services performed shall be  
 17 reasonable.

18 (4) The expenses incurred and payment received shall be  
 19 allocated to the insurer in conformity with customary insurance  
 20 accounting practices consistently applied.

21 (5) The books, accounts, and records of each party as to all  
 22 transactions described in this subsection shall be so maintained as  
 23 to clearly and accurately disclose the nature and details of the  
 24 transactions, including accounting information necessary to  
 25 support the reasonableness of the charges or fees to the respective  
 26 parties.

27 (6) The insurer's surplus as regards policyholders following any  
 28 transactions with affiliates or shareholder dividend shall be  
 29 reasonable in relation to the insurer's outstanding liabilities and  
 30 adequate to its financial needs.

31 (b) The following transactions involving a domestic insurer and any  
 32 person in its insurance holding company system (including  
 33 amendments or modifications to affiliate agreements previously filed  
 34 under this chapter) that are subject to any materiality standards  
 35 described in subdivisions (1) through (7) may not be entered into  
 36 unless the insurer has notified the commissioner in writing of its  
 37 intention to enter into such transaction at least thirty (30) days prior  
 38 thereto, or such shorter period as the commissioner may permit, and the  
 39 commissioner has not disapproved it within that period:

40 (1) Sales, purchases, exchanges, loans or extensions of credit,  
 41 guarantees, or investments, provided those transactions are equal  
 42 to or exceed:



- 1 (A) with respect to nonlife insurers, the lesser of three percent  
 2 (3%) of the insurer's admitted assets or twenty-five percent  
 3 (25%) of surplus as regards policyholders; and  
 4 (B) with respect to life insurers, three percent (3%) of the  
 5 insurer's admitted assets;  
 6 each as of December 31 next preceding.
- 7 (2) Loans or extensions of credit to any person who is not an  
 8 affiliate, where the insurer makes those loans or extensions of  
 9 credit with the agreement or understanding that the proceeds of  
 10 such transactions, in whole or in substantial part, are to be used  
 11 to make loans or extensions of credit to, to purchase assets of, or  
 12 to make investments in, any affiliate of the insurer making such  
 13 loans or extensions of credit, provided those transactions are  
 14 equal to or exceed:
- 15 (A) with respect to nonlife insurers, the lesser of three percent  
 16 (3%) of the insurer's admitted assets or twenty-five percent  
 17 (25%) of surplus as regards policyholders; and  
 18 (B) with respect to life insurers, three percent (3%) of the  
 19 insurer's admitted assets;  
 20 each as of December 31 next preceding.
- 21 (3) Reinsurance agreements or modifications thereto, including:
- 22 (A) reinsurance pooling agreements; and  
 23 (B) agreements under which:
- 24 (i) a reinsurance premium;  
 25 (ii) a change in the insurer's liabilities; or  
 26 (iii) the projected reinsurance premium;  
 27 in any of the immediately succeeding three (3) years equals or  
 28 exceeds five percent (5%) of the insurer's surplus as regards  
 29 policyholders, as of December 31 next preceding, including  
 30 those agreements that may require as consideration the transfer  
 31 of assets from an insurer to a nonaffiliate, if an agreement or  
 32 understanding exists between the insurer and nonaffiliate that  
 33 any portion of the assets will be transferred to one (1) or more  
 34 affiliates of the insurer.
- 35 (4) Management agreements, service contracts, cost-sharing  
 36 arrangements, lease agreements, guarantees, and tax allocation  
 37 agreements.
- 38 (5) Guarantees made by the insurer, only as follows:
- 39 (A) A guarantee, the amount of which is not quantifiable.  
 40 (B) A guarantee, the amount of which is quantifiable, if the  
 41 amount of the guarantee exceeds the lesser of:  
 42 (i) one-half of one percent (0.5%) of the insurer's admitted



- 1 assets; or  
 2 (ii) ten percent (10%) of surplus as regards policyholders;  
 3 on December 31 of the immediately preceding calendar year.  
 4 (6) Direct or indirect acquisitions or investments, as follows:  
 5 (A) In:  
 6 (i) a person that controls the insurer; or  
 7 (ii) an affiliate of the insurer in an amount that, together with  
 8 the insurer's present holdings in the investments, exceeds  
 9 two and one-half percent (2.5%) of the insurer's surplus to  
 10 policyholders.  
 11 (B) This subdivision does not apply to direct or indirect  
 12 acquisitions or investments in:  
 13 (i) subsidiaries acquired under section 2.6 of this chapter; or  
 14 (ii) nonsubsidiary insurance affiliates that are subject to this  
 15 chapter.  
 16 (7) Material transactions, specified by rule, that the commissioner  
 17 determines may adversely affect the interests of the insurer's  
 18 policyholders.  
 19 This subsection does not authorize or permit any transactions that, in  
 20 the case of an insurer not a member of the same insurance holding  
 21 company system, would be otherwise contrary to law. Notice  
 22 concerning amendments or modifications of a transaction must include  
 23 the reasons for the change and the financial impact on the domestic  
 24 insurer. Not more than thirty (30) days after an agreement that was  
 25 previously filed under this section is terminated, the domestic insurer  
 26 shall send written notice of the termination to the commissioner. The  
 27 commissioner shall determine whether a filing concerning the  
 28 termination is required and shall notify the domestic insurer of the  
 29 commissioner's determination.  
 30 (c) A domestic insurer may not enter into transactions that are part  
 31 of a plan or series of like transactions with persons within the insurance  
 32 holding company system if the purpose of those separate transactions  
 33 is to avoid the statutory threshold amount and thus avoid the review  
 34 that would occur otherwise.  
 35 (d) The commissioner, in reviewing transactions pursuant to  
 36 subsection (b), shall consider whether the transactions comply with the  
 37 standards set forth in subsection (a) and whether the transactions may  
 38 adversely affect the interests of policyholders.  
 39 (e) The commissioner shall be notified within thirty (30) days of any  
 40 investment of the domestic insurer in any one (1) corporation if the  
 41 total investment in that corporation by the insurance holding company  
 42 system exceeds ten percent (10%) of the corporation's voting securities.



1 (f) For purposes of this chapter, in determining whether an insurer's  
 2 surplus is reasonable in relation to the insurer's outstanding liabilities  
 3 and adequate to its financial needs, the following factors, among others,  
 4 shall be considered:

5 (1) The size of the insurer as measured by its assets, capital and  
 6 surplus, reserves, premium writings, insurance in force and other  
 7 appropriate criteria.

8 (2) The extent to which the insurer's business is diversified among  
 9 the several lines of insurance.

10 (3) The number and size of risks insured in each line of business.

11 (4) The extent of the geographical dispersion of the insurer's  
 12 insured risks.

13 (5) The nature and extent of the insurer's reinsurance program.

14 (6) The quality, diversification, and liquidity of the insurer's  
 15 investment portfolio.

16 (7) The recent past and projected future trend in the size of the  
 17 insurer's surplus as regards policyholders.

18 (8) The surplus as regards policyholders maintained by other  
 19 comparable insurers in respect of the factors described in  
 20 subdivisions (1) through (7).

21 (9) The adequacy of the insurer's reserves.

22 (10) The quality and liquidity of investments in subsidiaries,  
 23 except that the commissioner may discount or treat any such  
 24 investment in subsidiaries as a disallowed asset for purposes of  
 25 determining the adequacy of surplus whenever in the  
 26 commissioner's judgment such investment so warrants.

27 (11) The quality of the earnings of the insurer and the extent to  
 28 which the reported earnings of the insurer include extraordinary  
 29 items.

30 (g) No domestic insurer subject to registration under section 3 of  
 31 this chapter shall pay an extraordinary dividend or make any other  
 32 extraordinary distribution to its security holders until:

33 (1) thirty (30) days after the commissioner has received notice of  
 34 the declaration thereof and has not within such period  
 35 disapproved such payment; or

36 (2) the commissioner shall have approved such payment within  
 37 such thirty (30) day period.

38 (h) For purposes of subsection (g), ~~the following apply with respect~~  
 39 ~~to an extraordinary dividend or distribution:~~

40 (†) an extraordinary dividend or distribution is any dividend or  
 41 distribution of cash or other property whose fair market value,  
 42 together with that of other dividends or distributions made within





1 the twelve (12) consecutive months ending on the date on which  
 2 the proposed dividend or distribution is scheduled to be made,  
 3 exceeds the ~~lesser~~ **greater** of:

4 ~~(A)~~ **(1)** ten percent (10%) of such insurer's surplus as regards  
 5 policyholders as of the most recently preceding December 31;  
 6 or

7 ~~(B)~~ **(2)** the:

8 ~~(i)~~ **(A)** net gain from operations of such insurer, if such  
 9 insurer is a life insurer; or

10 ~~(ii)~~ **(B)** net income, if such insurer is not a life insurer;

11 ~~not including realized capital gains~~, for the twelve (12) month  
 12 period ending on the most recently preceding December 31.

13 ~~(2) An extraordinary dividend or distribution does not include pro~~  
 14 ~~rata distribution of any class of an insurer's own securities.~~

15 ~~(3) For purposes of determining whether a dividend or~~  
 16 ~~distribution is extraordinary, an insurer that is not a life insurer~~  
 17 ~~may carry forward net income that:~~

18 ~~(A) was received during the two (2) immediately preceding~~  
 19 ~~calendar years; and~~

20 ~~(B) has not been paid out as dividends;~~

21 ~~computed by subtracting the amount of dividends paid in the first~~  
 22 ~~and second immediately preceding calendar years from the~~  
 23 ~~amount of net income; not including realized capital gains;~~  
 24 ~~received in the second and third immediately preceding calendar~~  
 25 ~~years.~~

26 (i) Notwithstanding any other provision of law, a domestic insurer  
 27 may declare an extraordinary dividend or distribution which is  
 28 conditional upon the commissioner's approval thereof, but such a  
 29 declaration shall confer no rights upon shareholders until:

30 (1) the commissioner has approved the payment of such dividend  
 31 or distribution; or

32 (2) the commissioner has not disapproved the payment within the  
 33 thirty (30) day period referred to in subsection (g).

34 (j) The commissioner may impose a civil penalty of five thousand  
 35 dollars (\$5,000) on a person who fails to file a transaction as required  
 36 by this section. The commissioner shall deposit a civil penalty collected  
 37 under this subsection in the department of insurance fund established  
 38 by IC 27-1-3-28.

39 SECTION 4. IC 27-1-28-11, AS ADDED BY P.L.11-2011,  
 40 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2017]: Sec. 11. (a) If a catastrophe is declared, an insurer may  
 42 contract with an individual who:

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- 1 (1) is not licensed under this chapter; but  
 2 (2) is otherwise qualified to adjust claims;  
 3 to act as a temporary emergency independent adjuster on behalf of the  
 4 insurer if the insurer obtains for the individual a temporary emergency  
 5 independent adjuster license under this section.
- 6 (b) An insurer described in subsection (a) must, not more than five  
 7 (5) days after the individual begins to adjust claims arising from the  
 8 declared catastrophe, submit to the commissioner an application for  
 9 temporary emergency licensure of the individual under this section.
- 10 (c) An application submitted under subsection (b) must include the  
 11 following information in a format prescribed by the commissioner:  
 12 (1) The name of the individual.  
 13 ~~(2) The Social Security number of the individual.~~  
 14 ~~(3) (2)~~ The name of the insurer.  
 15 ~~(4) (3)~~ The effective date of the contract between the insurer and  
 16 the individual.  
 17 ~~(5) (4)~~ The catastrophe or loss number.  
 18 ~~(6) (5)~~ The catastrophe event name.  
 19 ~~(7) (6)~~ Other information the commissioner considers necessary.
- 20 (d) The commissioner shall establish standards and procedures for  
 21 temporary emergency independent adjuster licensure under this  
 22 section.
- 23 (e) A temporary emergency independent adjuster license issued  
 24 under this section is effective for not more than ninety (90) days, unless  
 25 extended by the commissioner. In the event of multiple catastrophes,  
 26 an individual who holds a temporary emergency independent adjuster  
 27 license issued under this section with respect to one (1) declared  
 28 catastrophe may adjust claims arising from any other catastrophe that  
 29 occurs within the ninety (90) day period during which the license is  
 30 effective under this subsection without the insurer applying for an  
 31 additional temporary emergency independent adjuster license.
- 32 (f) The rules adopted by the commissioner under section 2 of this  
 33 chapter may establish a fee for an application submitted under this  
 34 section.
- 35 SECTION 5. IC 27-1-28-13, AS ADDED BY P.L.11-2011,  
 36 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2017]: Sec. 13. (a) A business entity may apply for a resident  
 38 independent adjuster license by submitting:  
 39 (1) a uniform business entity application to the commissioner with  
 40 a declaration, under penalty of suspension, revocation, or refusal  
 41 of licensure, that the statements made in the application are true  
 42 and complete to the best knowledge of the individual submitting



1 the application on behalf of the business entity;  
 2 (2) an application fee of forty dollars (\$40); and  
 3 (3) the name, address, ~~Social Security number~~, and criminal and  
 4 administrative history of each of the following:  
 5 (A) An owner that has at least ten percent (10%) interest or  
 6 voting interest in the business entity.  
 7 (B) A partner of the business entity.  
 8 (C) An executive officer of the business entity.  
 9 (D) A director of the business entity.  
 10 (b) The commissioner shall approve an application submitted by a  
 11 business entity under subsection (a) upon finding all of the following:  
 12 (1) The business entity is eligible to designate Indiana as the  
 13 business entity's home state.  
 14 (2) The business entity has designated an individual independent  
 15 adjuster licensed under this chapter to be responsible for the  
 16 business entity's compliance with Indiana insurance law.  
 17 (3) The business entity has not committed any act that is grounds  
 18 for probation, suspension, revocation, or refusal of an independent  
 19 adjuster license under section 18 of this chapter.  
 20 (c) The commissioner may require a business entity applying under  
 21 this section to produce any documents reasonably necessary to verify  
 22 the information contained in the application.  
 23 SECTION 6. IC 27-1-31-3 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) If an insurer  
 25 refuses to renew a policy of insurance written by the insurer, the insurer  
 26 shall provide written notice of nonrenewal to the insured:  
 27 (1) at least forty-five (45) days before the expiration date of the  
 28 policy, if the coverage provided is for one (1) year, or less; or  
 29 (2) at least forty-five (45) days before the anniversary date of the  
 30 policy, if the coverage provided is for more than one (1) year.  
 31 (b) A notice of nonrenewal is not required if  
 32 ~~(+) the insured is transferred from an insurer to an affiliate of the~~  
 33 ~~insurer for future coverage. as a result of a merger, an acquisition,~~  
 34 ~~or a company restructuring;~~  
 35 ~~(2) the transfer results in the same or broader coverage; and~~  
 36 ~~(3) the insured approves the transfer.~~  
 37 SECTION 7. IC 27-7-1-1 IS AMENDED TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 2017]: Sec. 1. **Except on a surplus lines basis**  
 39 **under IC 27-1-15.8**, no persons, partnerships or corporations shall  
 40 engage in the business of such insurance as is herein specified as  
 41 "Lloyds" unless twenty-five (25) or more persons, partnerships or  
 42 corporations, a majority of whom shall be bona fide residents of the



1 state of Indiana shall have a certificate of authority from the ~~auditor of~~  
 2 ~~state (commissioner of insurance)~~ **insurance commissioner** so to do.  
 3 The application for such certificate of authority shall be signed by the  
 4 attorney or attorneys in fact of those persons desiring such certificate,  
 5 and must be accompanied by a declaration which must set forth the  
 6 following provisions:

7 1. The name under which the business is to be conducted, which  
 8 name shall contain the word "Lloyds," and shall not be similar to that  
 9 of any existing Lloyds association or corporation in this state, as, in the  
 10 opinion of the ~~auditor of state;~~ **insurance commissioner**, is calculated  
 11 to deceive or mislead.

12 2. The exact location of the principal office in which the business is  
 13 to be conducted, which office must be in the state of Indiana.

14 3. The kind of insurance intended to be written, which shall be only  
 15 as hereinafter stated.

16 4. An exact copy of the articles of association or copartnership  
 17 agreement, made by and between such underwriters.

18 5. Name, address and amount subscribed by each of the  
 19 underwriters so proposing to engage in said business.

20 6. The designation or appointment of one (1) or more attorneys in  
 21 fact, who shall have residence in Indiana, with full name and address,  
 22 upon any one of whom summons or consent legal process can be  
 23 served.

24 7. That amounts subscribed by said underwriters have been paid as  
 25 follows:

26 (A) Not less than twenty-five ~~per cent~~ **percent** (25%) of said  
 27 subscriptions in cash.

28 (B) Not more than fifty percent (50%) of said subscription  
 29 secured by collateral note (payable on thirty (30) ~~days'~~ **days**  
 30 demand) duly approved by a committee selected by the  
 31 subscribers to pass thereon. ~~and~~

32 (C) Not ~~over~~ **more than** twenty-five ~~per cent~~ **percent** (25%) of  
 33 said subscription evidenced by subscriber's individual note.

34 8. That the total of said subscription shall not be less than two  
 35 hundred and fifty thousand dollars (\$250,000), and that at least  
 36 twenty-five ~~per cent~~ **percent** (25%) thereof has been paid in cash.

37 SECTION 8. IC 27-7-1-2 IS AMENDED TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 2017]: Sec. 2. There shall be filed with the  
 39 ~~auditor of state~~ **insurance commissioner** a copy of each form of policy  
 40 by it issued. Said policies shall show the name and address, as well as  
 41 the amount of the subscription of each subscriber, and shall be signed  
 42 by the attorneys in fact, and they shall contain the following special



1 provisions:  
 2 First: Whenever, under the terms of this policy, notice or consent is  
 3 required to be given to or by the company, notice or consent given to  
 4 or by the attorney or attorneys in fact shall be sufficient compliance  
 5 therewith, and each underwriter hereon shall be bound thereby, the  
 6 same as though notice or consent had been given to or by each of such  
 7 underwriters individually.  
 8 Second: In no event, shall the liability of any underwriter exceed the  
 9 sum underwritten by ~~him~~ **the underwriter** or ~~them~~ **underwriters**  
 10 hereon, and, in no event, shall any underwriter be liable for any part of  
 11 the sum underwritten hereon by any other underwriter.  
 12 Third: The insured agrees by the acceptance of this policy that no  
 13 underwriter hereon shall, in any event, be liable for claims exceeding,  
 14 in the aggregate, on all policies, certificates or contracts issued on ~~his~~  
 15 ~~or their~~ **behalf of the underwriter or underwriters**, in the name of  
 16 this Lloyds for an amount in excess of the unpaid portion, if any, of ~~the~~  
 17 ~~his or their~~ original subscription or contribution **of the underwriter or**  
 18 **underwriters** to said Lloyds, as ~~indorsed~~ **endorsed** hereon.  
 19 Fourth: In case of action brought to enforce the provisions of this  
 20 policy, same shall be brought against the attorney or attorneys in fact  
 21 for the underwriters, as representing all of the said underwriters, and  
 22 each of the underwriters hereto hereby agrees to abide by the final  
 23 results of any suit so brought as fixing the proportionate amount of ~~his~~  
 24 ~~or their~~ **the individual liability of the underwriter or underwriters**.  
 25 Fifth: This policy is made and accepted subject to all the stipulations  
 26 and conditions contained therein, together with such other provisions,  
 27 agreements or conditions as may be ~~indorsed~~ **endorsed** hereon, or  
 28 added hereto, and as to such provisions and conditions, no officer,  
 29 agent or representative shall have such power or be deemed or held to  
 30 have waived such provisions or conditions unless such waiver, if any,  
 31 shall be ~~indorsed~~ **endorsed** upon or attached hereto, nor shall any  
 32 privilege or permission affecting the insurance under this policy exist  
 33 or be claimed by the assured unless so ~~indorsed~~ **endorsed** or attached.  
 34 SECTION 9. IC 27-7-1-3 IS AMENDED TO READ AS FOLLOWS  
 35 [EFFECTIVE JULY 1, 2017]: Sec. 3. After any Lloyds is authorized to  
 36 do business in this state pursuant to this law, it may be joined by other  
 37 and additional underwriters, but, in that event, such underwriters who  
 38 may thereafter join such authorized Lloyds shall be held to be bound  
 39 by the documents on file with the ~~auditor of state~~ **insurance**  
 40 **commissioner** concerning such Lloyds.  
 41 SECTION 10. IC 27-7-1-4 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. After such



1 documents specified shall have been filed, the ~~auditor of state~~  
 2 **insurance commissioner** shall cause an examination of such Lloyds  
 3 to be made, and after ~~he~~ **the insurance commissioner** has specified  
 4 that all of the facts alleged in the declaration are true, and that the  
 5 articles of association or copartnership agreement is of such character  
 6 that the rights of the policyholders will be protected thereunder, ~~he~~ **the**  
 7 **insurance commissioner** shall issue, or cause to be issued, a certificate  
 8 of authority to such Lloyds to do such business as is specified in the  
 9 declaration, which certificate shall be issued to such Lloyds under the  
 10 name designated and approved, authorizing the underwriters thereof to  
 11 do the business permitted through its attorney or attorneys in fact.

12 SECTION 11. IC 27-7-1-8 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. The ~~auditor of state~~  
 14 **insurance commissioner** shall have the same supervision and control  
 15 over Lloyds as ~~he~~ **the insurance commissioner** has over stock  
 16 insurance companies incorporated under the laws of Indiana.

17 SECTION 12. IC 27-7-1-9 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 9. The insurance  
 19 commissioner may, in ~~his~~ **the insurance commissioner's** discretion,  
 20 issue a certificate of authority to a Lloyds domiciled in another state to  
 21 do business in this state, for permission to do which application is  
 22 made as may be authorized by the articles of association or  
 23 copartnership agreement under which said Lloyds is operated.  
 24 ~~provided;~~ However, ~~that~~ in no event shall authority be given to any  
 25 such Lloyds to do any kind of insurance business other than those  
 26 specified in section 7 of this chapter. The application for such  
 27 certificate shall specify the kind of business such Lloyds desires the  
 28 authority to transact in this state. It must be signed by the attorney or  
 29 attorneys in fact for such Lloyds, and must file with the ~~auditor of state~~  
 30 **insurance commissioner** a certificate from the insurance department  
 31 of its home state that it has and maintains at all times an unearned  
 32 premium reserve as is required of stock companies of said state, and  
 33 that the total subscription of its subscribers shall not be less than two  
 34 hundred ~~and~~ fifty thousand dollars (\$250,000), and that at least  
 35 twenty-five percent (25%) thereof is paid in cash.

36 SECTION 13. IC 27-7-1-10 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. A true copy of the  
 38 articles of association or copartnership agreement, power of attorney,  
 39 and a copy of each form of policy by it issued, verified by the attorney  
 40 or attorneys in fact, shall be filed with the ~~auditor of state;~~ **insurance**  
 41 **commissioner**, as well as a copy of the last report filed with the  
 42 insurance department of its home state, and also a declaration and



1 agreement, duly executed and acknowledged by the attorneys in fact of  
 2 said Lloyds, appointing the ~~auditor of state~~ **insurance commissioner**  
 3 as a true and lawful attorney for such Lloyds and the underwriters  
 4 thereof in and for this state, upon whom all legal process in any action  
 5 or proceedings against said Lloyds or the underwriters thereof may be  
 6 served, and that any service upon ~~him~~ **the insurance commissioner**  
 7 shall be equivalent to the personal service within the state of such  
 8 persons of each and every such underwriter.

9 SECTION 14. IC 27-7-6-6 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. (a) No insurer shall  
 11 fail to renew a policy unless it shall mail or deliver to the named  
 12 insured, at the address shown in the policy, at least twenty (20) ~~days~~  
 13 **days** advance notice of its intention not to renew. In the event such  
 14 policy was procured by an insurance producer duly licensed by the  
 15 state of Indiana notice of intent not to renew shall be mailed or  
 16 delivered to the insurance producer at least ten (10) days prior to such  
 17 mailing or delivery to the named insured unless such notice of intent is  
 18 or has been waived in writing by the insurance producer.

19 (b) This section shall not apply:

- 20 (1) if the insurer has manifested its willingness to renew; or  
 21 (2) in case of nonpayment of premium.

22 However, notwithstanding the failure of an insurer to comply with this  
 23 section, the policy shall terminate on the effective date of any other  
 24 insurance policy with respect to any automobile designated in both  
 25 policies.

26 (c) A notice of intention not to renew is not required if

- 27 ~~(1) the insured is transferred from an insurer to an affiliate of the~~  
 28 ~~insurer for future coverage. as a result of a merger, an acquisition,~~  
 29 ~~or a company restructuring;~~  
 30 ~~(2) the transfer results in the same or broader coverage; and~~  
 31 ~~(3) the insured approves the transfer.~~

32 (d) Renewal of a policy shall not constitute a waiver or estoppel  
 33 with respect to grounds for cancellation which existed before the  
 34 effective date of such renewal.

35 SECTION 15. IC 27-7-12-4 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) Notice of  
 37 nonrenewal by an insurer must:

- 38 (1) be in writing;  
 39 (2) be delivered or mailed to the named insured at the last known  
 40 address of the named insured;  
 41 (3) state the insurer's intention not to renew the policy upon  
 42 expiration of the current policy period;



1 (4) upon request of the named insured, be accompanied by a  
 2 written explanation of the specific reasons for the nonrenewal;  
 3 and  
 4 (5) be provided to the named insured at least twenty (20) days  
 5 before the expiration of the current policy period.  
 6 (b) If the policy was procured by an independent insurance producer  
 7 licensed in Indiana, the insurer shall deliver or mail notice of  
 8 nonrenewal to the insurance producer not less than ten (10) days before  
 9 the insurer delivers or mails the notice to the named insured, unless the  
 10 obligation to notify the insurance producer is waived in writing by the  
 11 insurance producer.  
 12 **(c) Notice of nonrenewal under this section is not required if the**  
 13 **named insured is transferred from an insurer to an affiliate of the**  
 14 **insurer for future coverage.**  
 15 ~~(e)~~ **(d)** If an insurer mails or delivers to an insured a renewal notice,  
 16 bill, certificate, or policy indicating the insurer's willingness to renew  
 17 a policy and the insured does not respond, the insurer is not required to  
 18 provide to the insured notice of intention not to renew.  
 19 SECTION 16. IC 27-7-12-8 IS REPEALED [EFFECTIVE JULY 1,  
 20 2017]. ~~Sec. 8. The named insured must be given notice of a transfer of~~  
 21 ~~a policy, including a transfer between insurers within the same~~  
 22 ~~insurance group. The notice must:~~  
 23 ~~(1) be in writing;~~  
 24 ~~(2) be delivered or mailed to the named insured at the last known~~  
 25 ~~address of the named insured;~~  
 26 ~~(3) be provided to the named insured at least twenty (20) days~~  
 27 ~~before the transfer; and~~  
 28 ~~(4) identify the insurer to which the policy will be transferred.~~  
 29 SECTION 17. IC 27-9-3.1-12, AS ADDED BY P.L.11-2011,  
 30 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2017]: Sec. 12. Notwithstanding a **any other** provision of  
 32 ~~IC 27-9-3~~ or this ~~chapter title~~ to the contrary, a person may exercise  
 33 any of the following:  
 34 (1) A contractual right to cause the termination, liquidation,  
 35 acceleration, or close-out of obligations in connection with a  
 36 netting agreement or qualified financial contract with an insurer  
 37 due to:  
 38 (A) the insolvency, financial condition, or default of the  
 39 insurer if the right is enforceable under applicable law other  
 40 than this ~~chapter~~ **title**; or  
 41 (B) the commencement of a formal delinquency proceeding  
 42 under IC 27-9-3.





- 1 (2) A right under:  
 2 (A) a pledge, security, collateral, reimbursement, guarantee  
 3 agreement, or similar security agreement; or  
 4 (B) an arrangement or credit enhancement relating to at least  
 5 one (1) netting agreement or qualified financial contract.  
 6 (3) A right to set off or net out a termination value, payment  
 7 amount, or other transfer obligation arising in connection with at  
 8 least one (1) qualified financial contract in which the counterparty  
 9 or the counterparty's guarantor is organized under the laws of:  
 10 (A) the United States; or  
 11 (B) a state or foreign jurisdiction approved as eligible for  
 12 netting by the Securities Valuation Office of the NAIC.

13 SECTION 18. IC 34-6-2-32.5 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2017]: **Sec. 32.5. "Cyber liability" means**  
 16 **liability related to use of computer systems.**

17 SECTION 19. IC 34-13-3-20, AS AMENDED BY P.L.35-2012,  
 18 SECTION 106, IS AMENDED TO READ AS FOLLOWS  
 19 [EFFECTIVE JULY 1, 2017]: Sec. 20. (a) A political subdivision may  
 20 purchase insurance to cover the liability of itself or its employees,  
 21 including a member of a board, a committee, a commission, a  
 22 authority, or another instrumentality of a governmental entity. Any  
 23 liability insurance so purchased shall be purchased by invitation to and  
 24 negotiation with providers of insurance and may be purchased with  
 25 other types of insurance. If such a policy is purchased, the terms of the  
 26 policy govern the rights and obligations of the political subdivision and  
 27 the insurer with respect to the investigation, settlement, and defense of  
 28 claims or suits brought against the political subdivision or its  
 29 employees covered by the policy. However, the insurer may not enter  
 30 into a settlement for an amount that exceeds the insurance coverage  
 31 without the approval of the mayor, if the claim or suit is against a city,  
 32 or the governing body of any other political subdivision, if the claim or  
 33 suit is against such political subdivision.

34 **(b) The state may purchase insurance to cover the cyber liability**  
 35 **of itself or its employees, including a member of a board, a**  
 36 **committee, a commission, an authority, or another instrumentality**  
 37 **of the state. Any liability insurance so purchased shall be**  
 38 **purchased by invitation to and negotiation with providers of**  
 39 **insurance and may be purchased with other types of insurance. If**  
 40 **such a policy is purchased, the terms of the policy govern the rights**  
 41 **and obligations of the state and the insurer with respect to the**  
 42 **investigation, settlement, and defense of claims or suits brought**



1 **against the state or state employees covered by the policy.**  
2 **However, the insurer may not enter into a settlement for an**  
3 **amount that exceeds the insurance coverage without the approval**  
4 **of the governor.**

5 ~~(b)~~ (c) The state may not purchase insurance to cover the liability of  
6 the state or its employees. This subsection does not prohibit any of the  
7 following:

8 (1) The requiring of contractors to carry insurance.

9 (2) The purchase of insurance to cover losses occurring on real  
10 property owned by:

11 (A) the Indiana public retirement system; or

12 (B) a public pension and retirement fund administered by the  
13 Indiana public retirement system.

14 (3) The purchase of insurance by a separate body corporate and  
15 politic to cover the liability of itself or its employees.

16 (4) The purchase of casualty and liability insurance for foster  
17 parents (as defined in IC 27-1-30-4) on a group basis.

18 **(5) A purchase of cyber liability insurance under subsection**  
19 **(b).**

20 **SECTION 20. An emergency is declared for this act.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1318, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 3. IC 27-1-23-4, AS AMENDED BY P.L.72-2016, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Material transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

- (1) The terms shall be fair and reasonable.
- (2) Agreements concerning cost sharing services and management must include provisions required by the commissioner in rules adopted under IC 4-22-2.
- (3) The charges or fees for services performed shall be reasonable.
- (4) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.
- (5) The books, accounts, and records of each party as to all transactions described in this subsection shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties.
- (6) The insurer's surplus as regards policyholders following any transactions with affiliates or shareholder dividend shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system (including amendments or modifications to affiliate agreements previously filed under this chapter) that are subject to any materiality standards described in subdivisions (1) through (7) may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

- (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided those transactions are equal



to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes those loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, provided those transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(3) Reinsurance agreements or modifications thereto, including:

(A) reinsurance pooling agreements; and

(B) agreements under which:

(i) a reinsurance premium;

(ii) a change in the insurer's liabilities; or

(iii) the projected reinsurance premium;

in any of the immediately succeeding three (3) years equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer.

(4) Management agreements, service contracts, cost-sharing arrangements, lease agreements, guarantees, and tax allocation agreements.

(5) Guarantees made by the insurer, only as follows:

(A) A guarantee, the amount of which is not quantifiable.

(B) A guarantee, the amount of which is quantifiable, if the amount of the guarantee exceeds the lesser of:



- (i) one-half of one percent (0.5%) of the insurer's admitted assets; or
  - (ii) ten percent (10%) of surplus as regards policyholders; on December 31 of the immediately preceding calendar year.
- (6) Direct or indirect acquisitions or investments, as follows:
- (A) In:
    - (i) a person that controls the insurer; or
    - (ii) an affiliate of the insurer in an amount that, together with the insurer's present holdings in the investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders.
  - (B) This subdivision does not apply to direct or indirect acquisitions or investments in:
    - (i) subsidiaries acquired under section 2.6 of this chapter; or
    - (ii) nonsubsidiary insurance affiliates that are subject to this chapter.
- (7) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

This subsection does not authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law. Notice concerning amendments or modifications of a transaction must include the reasons for the change and the financial impact on the domestic insurer. Not more than thirty (30) days after an agreement that was previously filed under this section is terminated, the domestic insurer shall send written notice of the termination to the commissioner. The commissioner shall determine whether a filing concerning the termination is required and shall notify the domestic insurer of the commissioner's determination.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(d) The commissioner, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a) and whether the transactions may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in that corporation by the insurance holding company



system exceeds ten percent (10%) of the corporation's voting securities.

(f) For purposes of this chapter, in determining whether an insurer's surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.
- (2) The extent to which the insurer's business is diversified among the several lines of insurance.
- (3) The number and size of risks insured in each line of business.
- (4) The extent of the geographical dispersion of the insurer's insured risks.
- (5) The nature and extent of the insurer's reinsurance program.
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio.
- (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.
- (8) The surplus as regards policyholders maintained by other comparable insurers in respect of the factors described in subdivisions (1) through (7).
- (9) The adequacy of the insurer's reserves.
- (10) The quality and liquidity of investments in subsidiaries, except that the commissioner may discount or treat any such investment in subsidiaries as a disallowed asset for purposes of determining the adequacy of surplus whenever in the commissioner's judgment such investment so warrants.
- (11) The quality of the earnings of the insurer and the extent to which the reported earnings of the insurer include extraordinary items.

(g) No domestic insurer subject to registration under section 3 of this chapter shall pay an extraordinary dividend or make any other extraordinary distribution to its security holders until:

- (1) thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or
- (2) the commissioner shall have approved such payment within such thirty (30) day period.

(h) For purposes of subsection (g), ~~the following apply with respect to an extraordinary dividend or distribution:~~

- (+) an extraordinary dividend or distribution is any dividend or distribution of cash or other property whose fair market value,



together with that of other dividends or distributions made within the twelve (12) consecutive months ending on the date on which the proposed dividend or distribution is scheduled to be made, exceeds the ~~lesser~~ **greater** of:

~~(A)~~ **(1)** ten percent (10%) of such insurer's surplus as regards policyholders as of the most recently preceding December 31; or

~~(B)~~ **(2)** the:

~~(i)~~ **(A)** net gain from operations of such insurer, if such insurer is a life insurer; or

~~(ii)~~ **(B)** net income, if such insurer is not a life insurer;

~~not including realized capital gains;~~ for the twelve (12) month period ending on the most recently preceding December 31.

~~(2) An extraordinary dividend or distribution does not include pro rata distribution of any class of an insurer's own securities.~~

~~(3) For purposes of determining whether a dividend or distribution is extraordinary, an insurer that is not a life insurer may carry forward net income that:~~

~~(A) was received during the two (2) immediately preceding calendar years; and~~

~~(B) has not been paid out as dividends;~~

~~computed by subtracting the amount of dividends paid in the first and second immediately preceding calendar years from the amount of net income; not including realized capital gains; received in the second and third immediately preceding calendar years.~~

(i) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, but such a declaration shall confer no rights upon shareholders until:

(1) the commissioner has approved the payment of such dividend or distribution; or

(2) the commissioner has not disapproved the payment within the thirty (30) day period referred to in subsection (g).

(j) The commissioner may impose a civil penalty of five thousand dollars (\$5,000) on a person who fails to file a transaction as 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."

Page 8, delete lines 19 through 41.

Page 11, line 7, delete ", including liability for" and insert ".".

Page 11, delete lines 8 through 28.



Page 12, after line 31, begin a new paragraph and insert:  
"SECTION 22. **An emergency is declared for this act.**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1318 as introduced.)

CARBAUGH

Committee Vote: yeas 12, nays 0.

