



February 24, 2006

**ENGROSSED
SENATE BILL No. 229**

DIGEST OF SB 229 (Updated February 23, 2006 10:53 am - DI 97)

Citations Affected: IC 27-1.

Synopsis: Independent college self-insurance program. Allows independent colleges and universities to establish a trust to jointly self-insure retained risks under certain circumstances. Requires registration and regulation of such a trust by the department of insurance.

Effective: July 1, 2006.

Lubbers, Lanane, Hershman, Zakas
(HOUSE SPONSORS — TURNER, FRIEND, PORTER)

January 9, 2006, read first time and referred to Committee on Insurance and Financial Institutions.

January 30, 2006, amended, reported favorably — Do Pass.

February 1, 2006, read second time, amended, ordered engrossed.

February 2, 2006, engrossed. Read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 7, 2006, read first time and referred to Committee on Insurance.

February 23, 2006, reported — Do Pass.

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ES 229—LS 6483/DI 97+



February 24, 2006

Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

**ENGROSSED
SENATE BILL No. 229**



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 27-1-39 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]:

4 **Chapter 39. Independent Educational Institution Self-Insurance**
5 **Consortium**

6 **Sec. 1. As used in this chapter, "commissioner" means the**
7 **insurance commissioner appointed under IC 27-1-1-2.**

8 **Sec. 2. As used in this chapter, "consortium" refers to a**
9 **self-insurance consortium established under section 7 of this**
10 **chapter.**

11 **Sec. 3. As used in this chapter, "department" refers to the**
12 **department of insurance created by IC 27-1-1-1.**

13 **Sec. 4. As used in this chapter, "independent educational**
14 **institution" refers to an independent, degree granting college or**
15 **university that is:**

- 16 (1) **accredited by the Higher Learning Commission of the**
17 **North Central Association of Colleges and Schools;**

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1 (2) chartered in Indiana; and
 2 (3) operated as a nonprofit entity under Section 501(c)(3) of
 3 the Internal Revenue Code.
 4 Sec. 5. As used in this chapter, "member" means an
 5 independent educational institution that enters into an agreement
 6 under section 7 of this chapter to form a consortium.
 7 Sec. 6. As used in this chapter, "self-insurance fund" means a
 8 fund established by a consortium to provide money sufficient to:
 9 (1) cover self-insured risk retained by the consortium;
 10 (2) pay premiums for stop-loss insurance coverage; and
 11 (3) pay the administrative and other costs of the consortium.
 12 Sec. 7. (a) Notwithstanding any other law, two (2) or more
 13 independent educational institutions may establish a trust under
 14 Indiana law to establish and maintain a self-insurance consortium
 15 through which the independent educational institutions jointly
 16 maintain a self-insurance fund to cover certain retained risks and
 17 jointly purchase stop-loss insurance coverage. The coverage for
 18 retained risks or stop-loss insurance coverage provided for through
 19 the trust may include any of the following types of coverage:
 20 (1) Property and casualty coverage.
 21 (2) Worker's compensation coverage.
 22 (3) Employee health coverage.
 23 (4) Employee vision coverage.
 24 (5) Employee dental coverage.
 25 (6) Other coverage.
 26 (b) If the coverage described in subsection (a)(3), (a)(4), or (a)(5)
 27 is provided through the self-insurance fund, the coverage must be
 28 provided through a multiple employer welfare arrangement
 29 regulated under IC 27-1-34.
 30 Sec. 8. A consortium shall be governed by a governing authority
 31 comprised entirely of representatives of the consortium's members.
 32 Sec. 9. A trust created under section 7 of this chapter is subject
 33 to regulation by the department as follows:
 34 (1) The trust be registered with the department.
 35 (2) The trust shall:
 36 (A) retain a total risk for the self-insurance fund of not
 37 more than one hundred twenty-five percent (125%) of the
 38 amount of expected claims for the following year; and
 39 (B) obtain stop-loss insurance issued by an insurer
 40 authorized to do business in Indiana to cover losses in
 41 excess of the amount retained under clause (A).
 42 (3) Contributions by the members must be set to fund one

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hundred percent (100%) of the total risk retained under subdivision (2)(A) plus all other costs of the trust.

(4) The trust shall maintain a fidelity bond in an amount approved by the department, covering each person responsible for the trust, to protect against acts of fraud or dishonesty in servicing the trust.

(5) The trust is subject to IC 27-4-1-4.5 regarding claims settlement practices.

(6) The trust shall, before March 1 of each year, file an annual financial statement in the form required by IC 27-1-3-13.

(7) The trust is not a member of the Indiana insurance guaranty association under IC 27-6-8. The liability of each member is joint and several.

(8) The trust is subject to examination by the department. The trust shall pay all costs associated with an examination.

(9) The department may deny, suspend, or revoke the registration of the trust if the commissioner finds that the trust:

- (A) is in a hazardous financial condition;**
- (B) refuses to be examined or produce records for examination; or**
- (C) has failed to pay a final judgment rendered against the trust by a court within thirty (30) days.**

Sec. 10. The department may adopt rules under IC 4-22-2 to implement this chapter.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 229, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"Sec. 1. As used in this chapter, "commissioner" means the insurance commissioner appointed under IC 27-1-1-2."

Page 1, line 6, delete "1." and insert "2."

Page 1, line 7, delete "7" and insert "10".

Page 1, line 9, delete "2." and insert "3."

Page 1, line 10, delete "7" and insert "10".

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"Sec. 4. As used in this chapter, "examiner" has the meaning set forth in IC 27-1-3.1-4."

Page 1, line 11, delete "3." and insert "5."

Page 1, line 17, delete "4." and insert "6."

Page 2, line 8, delete "5." and insert "7."

Page 2, line 10, delete "7" and insert "10".

Page 2, line 11, delete "6." and insert "8."

Page 2, between lines 17 and 18, begin a new paragraph and insert:

"Sec. 9. As used in this chapter, "service provider" means an individual or entity that enters into a contract with a consortium program to provide to the consortium program:

- (1) administrative;**
- (2) insurance brokerage;**
- (3) claims administration;**
- (4) risk control; or**
- (5) investment management;**

services."

Page 2, line 18, delete "7." and insert "10".

Page 2, line 18, delete "five (5)" and insert "two (2)".

Page 2, line 35, delete "8." and insert "11".

Page 2, line 35, delete "body" and insert "authority".

Page 2, delete lines 37 through 42, begin a new paragraph and insert:

"Sec. 12. Except as provided in this chapter, the development, administration, and operation of a consortium program does not constitute the business of insurance, and a consortium program is not subject to the insurance laws of Indiana.

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Sec. 13. (a) A consortium program shall:

- (1) establish a self-insurance fund with a per claim limit and an aggregate limit on the total amount of self-insured risk retained by the members in a fiscal year; and**
- (2) maintain excess insurance coverage that has been reviewed and approved by the commissioner.**

(b) A self-insurance fund established under subsection (a) must be:

- (1) actuarially sound; and**
- (2) funded at the beginning of each fiscal year by a contribution from each member in an amount that reflects the member's share of self-insured risk and other costs of the consortium program.**

(c) Annual contributions to the self-insurance fund under subsection (b) must be:

- (1) determined using generally accepted actuarial standards; and**
- (2) set to fund, at the beginning of each fiscal year, at least one hundred percent (100%) of the self-insured risk retained by the members in a fiscal year plus the other costs of the consortium program, including premiums for excess insurance coverage.**

Sec. 14. (a) The governing authority of the consortium program shall adopt bylaws, including the following:

- (1) A financial plan setting forth in general terms:**
 - (A) the types of risks covered under the consortium program;**
 - (B) the per claim limit and the aggregate limit on the total amount of self-insured risk retained by the consortium program in a fiscal year;**
 - (C) the minimum amount of excess insurance coverage that must be maintained by the consortium program; and**
 - (D) the procedure for determining each member's annual contribution to the self-insurance fund.**
- (2) A plan of management that provides for:**
 - (A) the responsibility of the governing authority with regard to:**
 - (i) maintaining the amount of reserves in the self-insurance fund;**
 - (ii) disposing of surpluses; and**
 - (iii) administering the consortium program in the event of termination;**

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(B) the basis on which new members may be admitted to the consortium program;

(C) the basis on which participating members may withdraw from the consortium program, including a:

(i) thirty (30) day period at the end of each fiscal year after the consortium program's first year of operation during which a member may withdraw; and

(ii) requirement that a withdrawing member remains jointly and severally liable for any claim arising during the period during which the withdrawing member was a member; and

(D) other provisions necessary or desirable for the operation of the consortium program.

(3) A conflict of interest policy for:

(A) employees; and

(B) service providers;

of the consortium program.

(b) The following must be submitted to and approved by the commissioner before a consortium program may commence operations:

(1) A copy of the bylaws described in subsection (a).

(2) The form of any insurance contracts purchased by the consortium program, including contracts for excess insurance coverage.

(3) An accounting, based on generally accepted actuarial standards, of sufficient reserves committed to pay obligations of the consortium program.

(4) A copy of each coverage document form to be issued by the consortium program.

(5) Any other information determined necessary by the commissioner.

(c) If the commissioner does not disapprove the information submitted under subsection (b) earlier than thirty (30) days after the information is submitted, the information is considered approved.

Sec. 15. (a) A consortium program may enter into a contract with a service provider to obtain the services of the service provider.

(b) A contract entered into under subsection (a) must address the following:

(1) The term of the contract.

(2) The scope of services and responsibilities of the service

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provider.

(3) Compensation.

(4) Periodic reporting to the governing authority of the consortium program.

(5) The ownership and confidentiality of information and data utilized by the service provider in performing the service provider's responsibilities under the contract.

(6) Compliance with the conflict of interest policy established by the consortium program.

(7) Indemnification of the consortium program for negligence of the service provider and proof of errors and omissions insurance.

(8) Assignability of the contract.

(9) Competition between the service provider and the consortium program during and after the term of the contract.

(10) Cancellation of the contract.

Sec. 16. (a) A consortium program shall have an annual audit performed by an independent certified public accounting firm according to guidelines established by the department of insurance.

(b) Not later than one hundred eighty (180) calendar days after the close of a consortium program's fiscal year, the consortium program must furnish the consortium program's members with audited financial statements certified by an independent certified public accounting firm.

(c) Copies of the audit report and certified financial statements required under this section must be provided to the commissioner and the state board of accounts not later than one hundred eighty (180) calendar days after the close of the consortium program's fiscal year.

(d) A consortium program that fails to meet the deadline specified in subsection (c) without having obtained an extension from the commissioner is subject to a civil penalty of fifty dollars (\$50) per day until the required information is received by the commissioner.

(e) If a consortium program fails to have the annual audit performed as required by subsection (a), the commissioner shall cause the audit to be performed at the expense of the consortium program.

(f) The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial statements required under this section may be reviewed by the

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commissioner. The cost of a review under this subsection must be paid by the consortium program.

Sec. 17. Not later than sixty (60) calendar days after the beginning of a consortium program's fiscal year, the governing authority shall submit the following to the commissioner:

- (1) A copy of the bylaws adopted by the consortium program.
- (2) A copy of each coverage document form issued by the consortium program.
- (3) A copy of the insurance contracts purchased by the consortium program, including contracts for excess insurance coverage.
- (4) A copy of each service provider contract entered into by the consortium program.
- (5) A certification by an independent actuary that the reserves in the self-insurance fund are adequate to pay the obligations of the consortium program.

Sec. 18. (a) If a consortium program fails to comply with the requirements of this chapter, the commissioner shall issue a notice of noncompliance to the consortium program.

(b) Not later than thirty (30) calendar days after a consortium program receives a notice of noncompliance under subsection (a), the consortium program shall file with the commissioner a written request for time to restore compliance and a plan to restore compliance.

(c) The commissioner, on receiving the written request and plan to restore compliance filed under subsection (b), may grant a period not longer than one (1) year during which the consortium program may restore compliance.

(d) If:

- (1) a plan to restore compliance is not filed under subsection (b);
- (2) a plan to restore compliance is filed under subsection (b) and not approved by the commissioner; or
- (3) a plan to restore compliance is filed under subsection (b) and approved by the commissioner, and at the end of a period granted under subsection (c) the consortium program is not in compliance with this chapter;

the commissioner may act to liquidate or rehabilitate the consortium program under IC 27-9 as if the consortium program were an insurance company.

Sec. 19. (a) The commissioner or an examiner:

- (1) may conduct an examination of a consortium program

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under IC 27-1-3.1 as often as the commissioner, in the commissioner's sole discretion, considers appropriate; and (2) shall conduct an examination of a consortium program under IC 27-1-3.1 at least once every five (5) years.

(b) Upon determining that an examination described in subsection (a) is necessary, the commissioner shall issue an examination warrant:

- (1) appointing one (1) or more examiners to perform the examination; and
- (2) instructing the examiners appointed under subdivision (1) concerning the scope of the examination.

(c) In conducting an examination under this section, an examiner shall observe the requirements set forth in the NAIC examiner's handbook (as defined in IC 27-1-3.1-6), to the extent that the requirements are consistent with this chapter. The commissioner may employ additional guidelines or procedures necessary to determine a consortium program's compliance with this chapter.

Sec. 20. (a) A consortium program is subject to IC 27-4-1 as if the consortium program were an insurance company.

(b) The rights of a claimant under a consortium program are in no event less than the rights of a claimant under an insurance contract issued by an insurance company authorized to do business under IC 27.

Sec. 21. The commissioner shall, not later than February 1 of each year, report to the legislative council in an electronic format under IC 5-14-6. The report must include the following information for the previous calendar year:

- (1) A description of the scope of the market of coverage under:
 - (A) insurance contracts; and
 - (B) consortium programs; serving independent educational institutions.
- (2) The number of complaints filed against a consortium program under IC 27-4-1.
- (3) The number of independent educational institutions participating in consortium programs.
- (4) The loss history of each consortium program.

Sec. 22. An insurance producer that conducts business with a consortium program must be licensed as an insurance producer under IC 27-1-15.6.

Sec. 23. (a) Motor vehicle coverage provided by a consortium

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program must provide the ability for a member to respond in damages for liability arising out of the ownership, maintenance, or use of a motor vehicle in amounts at least equal to the amounts required under IC 9-25-4.

(b) A member that participates in the motor vehicle coverage provided by a consortium program is considered to meet the financial responsibility requirements set forth in IC 9-25-4, and an application for a certificate of self-insurance under IC 9-25-4-11 is not required.

Sec. 24. Information regarding the:

- (1) part of funds; or
- (2) liability reserve;

established by a consortium program to satisfy a specific claim or cause of action is confidential and is not subject to subpoena or order to produce, except in a supplementary or ancillary proceeding to enforce a judgment.

Sec. 25. The department of insurance may adopt rules under IC 4-22-2 to implement this chapter."

Delete page 3.

and when so amended that said bill do pass.

(Reference is to SB 229 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 6, Nays 0.

SENATE MOTION

Madam President: I move that Senator Lanane be added as coauthor of Senate Bill 229.

LUBBERS

SENATE MOTION

Madam President: I move that Senate Bill 229 be amended to read as follows:

Page 1, line 9, delete "10" and insert "7".

Page 1, line 11, delete ""consortium program"" and insert

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""department"".

Page 1, line 11, after "to" insert **"the department of insurance created by IC 27-1-1-1."**

Page 1, delete lines 12 through 17.

Page 2, delete lines 1 through 3.

Page 2, line 4, delete "6." and insert **"4."**

Page 2, line 12, delete "7." and insert **"5."**

Page 2, line 14, delete "10" and insert **"7"**.

Page 2, line 15, delete "8." and insert **"6."**

Page 2, line 17, delete "members for losses" and insert **"the consortium;"**.

Page 2, delete line 18.

Page 2, line 19, delete "excess" and insert **"stop-loss"**.

Page 2, line 20, after "consortium" insert **","**.

Page 2, delete lines 21 through 30.

Page 2, line 31, delete "10." and insert **"7. (a)"**.

Page 2, line 32, delete "enter into an agreement" and insert **"establish a trust under Indiana law"**.

Page 2, line 34, after "institutions" insert **"jointly"**.

Page 2, line 34, delete "program" and insert **"self-insurance fund"**.

Page 2, line 35, delete "of joint self-insurance".

Page 2, line 36, delete "excess" and insert **"stop-loss"**.

Page 2, line 36, delete ", including any of the following:" and insert **". The coverage for retained risks or stop-loss insurance coverage provided for through the trust may include any of the following types of coverage:**

- (1) Property and casualty coverage.**
- (2) Worker's compensation coverage.**
- (3) Employee health coverage.**
- (4) Employee vision coverage.**
- (5) Employee dental coverage.**
- (6) Other coverage.**

(b) If the coverage described in subsection (a)(3), (a)(4), or (a)(5) is provided through the self-insurance fund, the coverage must be provided through a multiple employer welfare arrangement regulated under IC 27-1-34."

Page 2, delete lines 37 through 42.

Page 3, delete lines 1 through 5.

Page 3, line 6, delete "11." and insert **"8."**

Page 3, delete lines 9 through 42, begin a new paragraph and insert:
"Sec. 9. A trust created under section 7 of this chapter is subject to regulation by the department as follows:

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- (1) The trust be registered with the department.**
- (2) The trust shall:**
 - (A) retain a total risk for the self-insurance fund of not more than one hundred twenty-five percent (125%) of the amount of expected claims for the following year; and**
 - (B) obtain stop-loss insurance issued by an insurer authorized to do business in Indiana to cover losses in excess of the amount retained under clause (A).**
- (3) Contributions by the members must be set to fund one hundred percent (100%) of the total risk retained under subdivision (2)(A) plus all other costs of the trust.**
- (4) The trust shall maintain a fidelity bond in an amount approved by the department, covering each person responsible for the trust, to protect against acts of fraud or dishonesty in servicing the trust.**
- (5) The trust is subject to IC 27-4-1-4.5 regarding claims settlement practices.**
- (6) The trust shall, before March 1 of each year, file an annual financial statement in the form required by IC 27-1-3-13.**
- (7) The trust is not a member of the Indiana insurance guaranty association under IC 27-6-8. The liability of each member is joint and several.**
- (8) The trust is subject to examination by the department. The trust shall pay all costs associated with an examination.**
- (9) The department may deny, suspend, or revoke the registration of the trust if the commissioner finds that the trust:**
 - (A) is in a hazardous financial condition;**
 - (B) refuses to be examined or produce records for examination; or**
 - (C) has failed to pay a final judgment rendered against the trust by a court within thirty (30) days.**

Sec. 10. The department may adopt rules under IC 4-22-2 to implement this chapter."

Delete pages 4 through 8.

(Reference is to SB 229 as printed January 30, 2006.)

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SENATE MOTION

Madam President: I move that Senators Hershman and Zakas be added as coauthors of Senate Bill 229.

LUBBERS

COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 229, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

RIPLEY, Chair

Committee Vote: yeas 9, nays 2.

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