

Dear Senator _____ ,

I am writing to you asking you to vote no concerning HB 1241 (anti-insurance coverage for environmental claims). Please look at this bill carefully and understand that contrary to the manner in which it has been represented, this bill will have significant and far-reaching impacts detrimental to Indiana businesses and Indiana communities. This is a bill that has been rushed through the House and at its core is unconstitutional.

This bill is an out-of-state business vs. in-state business issue. It gives huge, for-profit, national and international Insurance companies, – practically none of which are based in Indiana – a boost on the backs of Indiana manufacturers, those in the energy businesses and small businesses who will be left holding the bag for environmental cleanups. Indiana should side with Hoosier businesses.

This is the fourth time the insurance industry has attempted to overturn the Indiana Supreme Court's decisions on the pollution exclusion. Indiana businesses have wasted substantial time and energy defeating essentially the same bill, over and over. The Indiana business coalition forming will do their best to defeat it once again.

To define what is an excluded "pollutant," the statute uses very broad and ever-changing USEPA, OSHA and other governmental lists of tens of thousands of chemical substances. This accounts for nearly every substance known to man. Indiana should not incorporate such broad language into private contracts in such a non-transparent fashion.

The statute harms Indiana's business climate. Its vagueness creates uncertainty for businesses about what is and isn't insured. The statute excludes "agents that are recognized by industry or government to be harmful or toxic to an individual or to property," a phrase which has practically unlimited scope and reach. Indiana businesses would fight against language so vague in any environmental regulation. This is the equivalent of saying that Indiana businesses are naked for coverage with respect to agents that are recognized by the EPA now, or in the future, as harmful or toxic.

The statute will cost Indiana jobs. Unexpected cleanups can be devastatingly expensive. Killing off existing coverage for environmental losses will result in shuttered plants, abandoned gas stations and unfunded industrial sites and landfills. Taxpayers will be left holding the bag, both in terms of a diminished revenue base for government and for the eventual costs of cleanup.

The statute violates the principles of freedom of contract. Indiana's courts have told the insurance industry exactly how to write an exclusion that works: be specific about the substance being excluded. That is the free market solution and one that's fair, as it lets the buyer know exactly what he/she is getting and the maintains a free market to shop around if the product doesn't meet his/her purposes. This statute, with its labeling of nearly every substance known to man as a "pollutant," does just the opposite.

Many insurers have been using enforceable language for a decade or more without any government intervention. A few haven't, which led to the litigation several years ago. The repetitive litigation that

arose in the past was the result of some insurers not moving on and adopting new terms. The matter is thoroughly settled now, with the Indiana Supreme Court having looked at it four times, each time with the same result.

There is no crisis to be addressed as the current law has been in place since 1996. Contrary to the insurance industry's assertion, Indiana businesses enjoy a healthy and competitive insurance climate and premium prices are not greater in Indiana than they are in other states.

This bill is bad for the environment. Regulatory officials have indicated that approximately 70% of the dollars that have been spent on environmental cleanups in Indiana have been paid by insurers to defend and indemnify their Indiana policyholders against environmental claims. If those funds dry up as a result of the statute, the shortfall will either be made up by Indiana businesses or cleanups will remain unfunded, resulting in unmitigated environmental damage and unfunded Brownfields Indiana taxpayers must cover.

The bill also purports to tell courts that this law "shall be presumed to be clear and sufficient notice to an insured" and that it "shall not be considered ambiguous or unenforceable." Courts will not uphold this provision – blanket disclaimers of ambiguity give the insurers who draft the contracts a get out of jail free card to a well-established part of contract law: if it's drafted unilaterally, ambiguities are resolved in favor of the non-drafting party, which will result in more unnecessary litigation.

If you have carefully read and understand what is at stake here, you will support Indiana businesses and **vote no to HB 1241**.

Sincerely,