

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 386 be amended to read as follows:

- 1 Page 40, between lines 33 and 34, begin a new paragraph and insert:
- 2 " SECTION 12. IC 27-2-20 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2001]:
- 5 **Chapter 20. Underwriting of Property and Casualty Insurance**
- 6 **Sec. 1. As used in this chapter, "credit scoring methodology"**
- 7 **means the particular method that an insurer uses to apply a score**
- 8 **to elements of information contained in an individual's credit**
- 9 **history and arrive at a credit score for use in the insurance**
- 10 **underwriting process.**
- 11 **Sec. 2. As used in this chapter, "individual" means a natural**
- 12 **person, whether an adult or a minor.**
- 13 **Sec. 3. As used in this chapter, "insurer" has the meaning set**
- 14 **forth in IC 27-1-2-3(x).**
- 15 **Sec. 4. As used in this chapter, "property and casualty**
- 16 **insurance" means one (1) or more of the kinds of insurance**
- 17 **described in Class 2 and Class 3 of IC 27-1-5-1.**
- 18 **Sec. 5. An insurer may not, based solely on an individual's credit**
- 19 **history:**
- 20 **(1) refuse to issue;**
- 21 **(2) refuse to renew;**
- 22 **(3) cancel; or**
- 23 **(4) add a rating factor to the premium for;**
- 24 **a policy of property and casualty insurance that covers the**

1 individual.

2 **Sec. 6. (a) An insurer shall not use a credit scoring methodology**  
 3 **for the underwriting of a policy of property and casualty insurance**  
 4 **until:**

5 (1) the insurer has filed the credit scoring methodology with  
 6 the commissioner; and

7 (2) the commissioner has approved the credit scoring  
 8 methodology.

9 (b) If an insurer that files a credit scoring methodology under  
 10 subsection (a) designates the contents of the credit scoring  
 11 methodology as a trade secret (as defined in IC 24-2-3-2), the  
 12 commissioner shall not disclose the contents of the credit scoring  
 13 methodology to a third party.

14 (c) A credit scoring methodology, the contents of which are  
 15 designated as a trade secret under subsection (b), is confidential  
 16 and may not be disclosed under IC 5-14-3.

17 **Sec. 7. An individual who is adversely affected by an**  
 18 **underwriting determination that is made solely on the basis of the**  
 19 **individual's credit history may request and receive from the**  
 20 **insurer a written explanation of the insurer's reason for the:**

21 (1) cancellation of;

22 (2) nonrenewal of;

23 (3) refusal of the insurer to issue; or

24 (4) addition of a rating factor to the premium for;

25 a policy of property and casualty insurance.

26 **Sec. 8. A violation of this chapter by an insurer is an unfair and**  
 27 **deceptive act and practice in the business of insurance under**  
 28 **IC 27-4-1-4.**

29 **Sec. 9. This chapter is not intended to conflict with any**  
 30 **disclosure provisions of state law or the federal Truth in Lending**  
 31 **Act (15 U.S.C. 1601 et seq.) applying to lending institutions, credit**  
 32 **bureaus, or other credit service organizations that maintain or**  
 33 **distribute credit histories on insurance applicants or policyholders.**

34 SECTION 13. IC 27-4-1-4 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. The following are  
 36 hereby defined as unfair methods of competition and unfair and  
 37 deceptive acts and practices in the business of insurance:

38 (1) Making, issuing, circulating, or causing to be made, issued, or  
 39 circulated, any estimate, illustration, circular, or statement:

40 (A) misrepresenting the terms of any policy issued or to be  
 41 issued or the benefits or advantages promised thereby or the  
 42 dividends or share of the surplus to be received thereon;

43 (B) making any false or misleading statement as to the  
 44 dividends or share of surplus previously paid on similar  
 45 policies;

46 (C) making any misleading representation or any  
 47 misrepresentation as to the financial condition of any insurer,

- 1 or as to the legal reserve system upon which any life insurer  
2 operates;
- 3 (D) using any name or title of any policy or class of policies  
4 misrepresenting the true nature thereof; or
- 5 (E) making any misrepresentation to any policyholder insured  
6 in any company for the purpose of inducing or tending to  
7 induce such policyholder to lapse, forfeit, or surrender his  
8 insurance.
- 9 (2) Making, publishing, disseminating, circulating, or placing  
10 before the public, or causing, directly or indirectly, to be made,  
11 published, disseminated, circulated, or placed before the public,  
12 in a newspaper, magazine, or other publication, or in the form of  
13 a notice, circular, pamphlet, letter, or poster, or over any radio or  
14 television station, or in any other way, an advertisement,  
15 announcement, or statement containing any assertion,  
16 representation, or statement with respect to any person in the  
17 conduct of his insurance business, which is untrue, deceptive, or  
18 misleading.
- 19 (3) Making, publishing, disseminating, or circulating, directly or  
20 indirectly, or aiding, abetting, or encouraging the making,  
21 publishing, disseminating, or circulating of any oral or written  
22 statement or any pamphlet, circular, article, or literature which is  
23 false, or maliciously critical of or derogatory to the financial  
24 condition of an insurer, and which is calculated to injure any  
25 person engaged in the business of insurance.
- 26 (4) Entering into any agreement to commit, or individually or by  
27 a concerted action committing any act of boycott, coercion, or  
28 intimidation resulting or tending to result in unreasonable  
29 restraint of, or a monopoly in, the business of insurance.
- 30 (5) Filing with any supervisory or other public official, or making,  
31 publishing, disseminating, circulating, or delivering to any person,  
32 or placing before the public, or causing directly or indirectly, to  
33 be made, published, disseminated, circulated, delivered to any  
34 person, or placed before the public, any false statement of  
35 financial condition of an insurer with intent to deceive. Making  
36 any false entry in any book, report, or statement of any insurer  
37 with intent to deceive any agent or examiner lawfully appointed  
38 to examine into its condition or into any of its affairs, or any  
39 public official to which such insurer is required by law to report,  
40 or which has authority by law to examine into its condition or into  
41 any of its affairs, or, with like intent, willfully omitting to make a  
42 true entry of any material fact pertaining to the business of such  
43 insurer in any book, report, or statement of such insurer.
- 44 (6) Issuing or delivering or permitting agents, officers, or  
45 employees to issue or deliver, agency company stock or other  
46 capital stock, or benefit certificates or shares in any common law

1 corporation, or securities or any special or advisory board  
 2 contracts or other contracts of any kind promising returns and  
 3 profits as an inducement to insurance.

4 (7) Making or permitting any of the following:

5 (A) Unfair discrimination between individuals of the same  
 6 class and equal expectation of life in the rates or assessments  
 7 charged for any contract of life insurance or of life annuity or  
 8 in the dividends or other benefits payable thereon, or in any  
 9 other of the terms and conditions of such contract; however, in  
 10 determining the class, consideration may be given to the  
 11 nature of the risk, plan of insurance, the actual or expected  
 12 expense of conducting the business, or any other relevant  
 13 factor.

14 (B) Unfair discrimination between individuals of the same  
 15 class involving essentially the same hazards in the amount of  
 16 premium, policy fees, assessments, or rates charged or made  
 17 for any policy or contract of accident or health insurance or in  
 18 the benefits payable thereunder, or in any of the terms or  
 19 conditions of such contract, or in any other manner whatever;  
 20 however, in determining the class, consideration may be given  
 21 to the nature of the risk, the plan of insurance, the actual or  
 22 expected expense of conducting the business, or any other  
 23 relevant factor.

24 (C) Excessive or inadequate charges for premiums, policy  
 25 fees, assessments, or rates, or making or permitting any unfair  
 26 discrimination between persons of the same class involving  
 27 essentially the same hazards, in the amount of premiums,  
 28 policy fees, assessments, or rates charged or made for:

29 (i) policies or contracts of reinsurance or joint reinsurance,  
 30 or abstract and title insurance;

31 (ii) policies or contracts of insurance against loss or damage  
 32 to aircraft, or against liability arising out of the ownership,  
 33 maintenance, or use of any aircraft, or of vessels or craft,  
 34 their cargoes, marine builders' risks, marine protection and  
 35 indemnity, or other risks commonly insured under marine,  
 36 as distinguished from inland marine, insurance; or

37 (iii) policies or contracts of any other kind or kinds of  
 38 insurance whatsoever.

39 However, nothing contained in clause (C) shall be construed to  
 40 apply to any of the kinds of insurance referred to in clauses (A)  
 41 and (B) nor to reinsurance in relation to such kinds of insurance.  
 42 Nothing in clause (A), (B), or (C) shall be construed as making or  
 43 permitting any excessive, inadequate, or unfairly discriminatory  
 44 charge or rate or any charge or rate determined by the department  
 45 or commissioner to meet the requirements of any other insurance  
 46 rate regulatory law of this state.

1 (8) Except as otherwise expressly provided by law, knowingly  
2 permitting or offering to make or making any contract or policy  
3 of insurance of any kind or kinds whatsoever, including but not in  
4 limitation, life annuities, or agreement as to such contract or  
5 policy other than as plainly expressed in such contract or policy  
6 issued thereon, or paying or allowing, or giving or offering to pay,  
7 allow, or give, directly or indirectly, as inducement to such  
8 insurance, or annuity, any rebate of premiums payable on the  
9 contract, or any special favor or advantage in the dividends,  
10 savings, or other benefits thereon, or any valuable consideration  
11 or inducement whatever not specified in the contract or policy; or  
12 giving, or selling, or purchasing or offering to give, sell, or  
13 purchase as inducement to such insurance or annuity or in  
14 connection therewith, any stocks, bonds, or other securities of any  
15 insurance company or other corporation, association, limited  
16 liability company, or partnership, or any dividends, savings, or  
17 profits accrued thereon, or anything of value whatsoever not  
18 specified in the contract. Nothing in this subdivision and  
19 subdivision (7) shall be construed as including within the  
20 definition of discrimination or rebates any of the following  
21 practices:

22 (A) Paying bonuses to policyholders or otherwise abating their  
23 premiums in whole or in part out of surplus accumulated from  
24 nonparticipating insurance, so long as any such bonuses or  
25 abatement of premiums are fair and equitable to policyholders  
26 and for the best interests of the company and its policyholders.

27 (B) In the case of life insurance policies issued on the  
28 industrial debit plan, making allowance to policyholders who  
29 have continuously for a specified period made premium  
30 payments directly to an office of the insurer in an amount  
31 which fairly represents the saving in collection expense.

32 (C) Readjustment of the rate of premium for a group insurance  
33 policy based on the loss or expense experience thereunder, at  
34 the end of the first year or of any subsequent year of insurance  
35 thereunder, which may be made retroactive only for such  
36 policy year.

37 (D) Paying by an insurer or agent thereof duly licensed as such  
38 under the laws of this state of money, commission, or  
39 brokerage, or giving or allowing by an insurer or such licensed  
40 agent thereof anything of value, for or on account of the  
41 solicitation or negotiation of policies or other contracts of any  
42 kind or kinds, to a broker, agent, or solicitor duly licensed  
43 under the laws of this state, but such broker, agent, or solicitor  
44 receiving such consideration shall not pay, give, or allow  
45 credit for such consideration as received in whole or in part,  
46 directly or indirectly, to the insured by way of rebate.

- 1 (9) Requiring, as a condition precedent to loaning money upon the  
2 security of a mortgage upon real property, that the owner of the  
3 property to whom the money is to be loaned negotiate any policy  
4 of insurance covering such real property through a particular  
5 insurance agent or broker or brokers. However, this subdivision  
6 shall not prevent the exercise by any lender of its or his right to  
7 approve or disapprove of the insurance company selected by the  
8 borrower to underwrite the insurance.
- 9 (10) Entering into any contract, combination in the form of a trust  
10 or otherwise, or conspiracy in restraint of commerce in the  
11 business of insurance.
- 12 (11) Monopolizing or attempting to monopolize or combining or  
13 conspiring with any other person or persons to monopolize any  
14 part of commerce in the business of insurance. However,  
15 participation as a member, director, or officer in the activities of  
16 any nonprofit organization of agents or other workers in the  
17 insurance business shall not be interpreted, in itself, to constitute  
18 a combination in restraint of trade or as combining to create a  
19 monopoly as provided in this subdivision and subdivision (10).  
20 The enumeration in this chapter of specific unfair methods of  
21 competition and unfair or deceptive acts and practices in the  
22 business of insurance is not exclusive or restrictive or intended to  
23 limit the powers of the commissioner or department or of any  
24 court of review under section 8 of this chapter.
- 25 (12) Requiring as a condition precedent to the sale of real or  
26 personal property under any contract of sale, conditional sales  
27 contract, or other similar instrument or upon the security of a  
28 chattel mortgage, that the buyer of such property negotiate any  
29 policy of insurance covering such property through a particular  
30 insurance company, agent, or broker or brokers. However, this  
31 subdivision shall not prevent the exercise by any seller of such  
32 property or the one making a loan thereon, of his, her, or its right  
33 to approve or disapprove of the insurance company selected by  
34 the buyer to underwrite the insurance.
- 35 (13) Issuing, offering, or participating in a plan to issue or offer,  
36 any policy or certificate of insurance of any kind or character as  
37 an inducement to the purchase of any property, real, personal, or  
38 mixed, or services of any kind, where a charge to the insured is  
39 not made for and on account of such policy or certificate of  
40 insurance. However, this subdivision shall not apply to any of the  
41 following:
- 42 (A) Insurance issued to credit unions or members of credit  
43 unions in connection with the purchase of shares in such credit  
44 unions.
- 45 (B) Insurance employed as a means of guaranteeing the  
46 performance of goods and designed to benefit the purchasers

- 1 or users of such goods.
- 2 (C) Title insurance.
- 3 (D) Insurance written in connection with an indebtedness and  
4 intended as a means of repaying such indebtedness in the  
5 event of the death or disability of the insured.
- 6 (E) Insurance provided by or through motorists service clubs  
7 or associations.
- 8 (F) Insurance that is provided to the purchaser or holder of an  
9 air transportation ticket and that:
- 10 (i) insures against death or nonfatal injury that occurs during  
11 the flight to which the ticket relates;
- 12 (ii) insures against personal injury or property damage that  
13 occurs during travel to or from the airport in a common  
14 carrier immediately before or after the flight;
- 15 (iii) insures against baggage loss during the flight to which  
16 the ticket relates; or
- 17 (iv) insures against a flight cancellation to which the ticket  
18 relates.
- 19 (14) Refusing, because of the for-profit status of a hospital or  
20 medical facility, to make payments otherwise required to be made  
21 under a contract or policy of insurance for charges incurred by an  
22 insured in such a for-profit hospital or other for-profit medical  
23 facility licensed by the state department of health.
- 24 (15) Refusing to insure an individual, refusing to continue to issue  
25 insurance to an individual, limiting the amount, extent, or kind of  
26 coverage available to an individual, or charging an individual a  
27 different rate for the same coverage, solely because of that  
28 individual's blindness or partial blindness, except where the  
29 refusal, limitation, or rate differential is based on sound actuarial  
30 principles or is related to actual or reasonably anticipated  
31 experience.
- 32 (16) Committing or performing, with such frequency as to  
33 indicate a general practice, unfair claim settlement practices (as  
34 defined in section 4.5 of this chapter).
- 35 (17) Between policy renewal dates, unilaterally canceling an  
36 individual's coverage under an individual or group health  
37 insurance policy solely because of the individual's medical or  
38 physical condition.
- 39 (18) Using a policy form or rider that would permit a cancellation  
40 of coverage as described in subdivision (17).
- 41 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor  
42 vehicle insurance rates.
- 43 (20) Violating IC 27-8-21-2 concerning advertisements referring  
44 to interest rate guarantees.
- 45 (21) Violating IC 27-8-24.3 concerning insurance and health plan  
46 coverage for victims of abuse.

- 1 (22) Violating IC 27-1-15.5-3(h).
- 2 (23) Violating IC 27-8-26 concerning genetic screening or testing.
- 3 **(24) Violating IC 27-2-20 concerning underwriting of**
- 4 **property and casualty insurance."**
- 5 Renumber all SECTIONS consecutively.  
(Reference is to ESB 386 as printed April 9, 2001.)

---

Representative Ripley