

HOUSE BILL No. 1191

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-1-38; IC 27-4-1-4.

Synopsis: Insurance activities of depository institutions. Imposes certain requirements on depository institutions that sell, solicit, advertise, or offer insurance. Makes a violation of the requirements an unfair and deceptive act and practice in the business of insurance.

Effective: July 1, 2002.

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January 10, 2002, read first time and referred to Committee on Financial Institutions.

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Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

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HOUSE BILL No. 1191



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 27-1-38 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]:

4 **Chapter 38. Regulation of Depository Institutions**

5 **Sec. 1. As used in this chapter, "affiliate" means a company that**
6 **controls, is controlled by, or is under common control with another**
7 **company.**

8 **Sec. 2. As used in this section, "customer" means an individual**
9 **who purchases, applies to purchase, or is solicited to purchase**
10 **insurance primarily for personal, family, or household purposes.**

11 **Sec. 3. As used in this chapter, "depository institution" means**
12 **a depository financial institution (as defined in IC 28-9-2-6).**

13 **Sec. 4. As used in this section, "insurance producer" has the**
14 **meaning set forth in IC 27-1-15.6-2.**

15 **Sec. 5. As used in this chapter, "person that sells, solicits,**
16 **advertises, or offers insurance on behalf of a depository**
17 **institution" means a person to which one (1) of the following**



1 applies:

2 (1) The person represents to a customer that the sale,
3 solicitation, advertisement, or offer of insurance is by or on
4 behalf of the depository institution.

5 (2) The depository institution:

6 (A) refers a customer to the person; and

7 (B) has a contractual arrangement with the person to
8 receive commissions or fees on sales of insurance that
9 result from referrals to the person.

10 (3) Documents that provide evidence of the sale, solicitation,
11 advertisement, or offer of insurance identify or refer to the
12 depository institution.

13 **Sec. 6. This chapter does not apply to credit insurance.**

14 **Sec. 7. A depository institution or an affiliate of a depository
15 institution may not do the following:**

16 (1) As a condition precedent to a loan of money, an extension
17 of credit, or the renewal of a loan of money or an extension of
18 credit, require a customer to:

19 (A) purchase; or

20 (B) renew;

21 insurance through a particular insurer, insurance producer,
22 broker, or group of insurers or insurance producers.

23 (2) When insurance is required in connection with a loan of
24 money or an extension of credit, reject an insurance policy
25 solely because the insurance policy was issued by an insurer
26 that is not associated with the depository institution or an
27 affiliate of the depository institution.

28 (3) As a condition precedent to an extension of credit or an
29 offer of a product or service that is equivalent to an extension
30 of credit, require a customer to obtain insurance from a
31 particular depository institution, affiliate of a depository
32 institution, insurance producer, or insurer. This subdivision
33 does not prohibit a depository institution or an affiliate of a
34 depository institution from informing a customer or
35 prospective customer that:

36 (A) insurance is required for a loan of money or an
37 extension of credit;

38 (B) approval for a loan of money or an extension of credit
39 is contingent upon the purchase of insurance; or

40 (C) insurance is available through the depository
41 institution or affiliate.

42 (4) Unreasonably reject an insurance policy that is furnished

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1 by a customer for the protection of property that secures a
 2 loan of money or an extension of credit to the customer. For
 3 purposes of this subdivision, a rejection is not unreasonable if
 4 the rejection is based on uniformly applied reasonable
 5 standards that:

6 (A) relate to the extent of insurance required;

7 (B) relate to the financial soundness and services of the
 8 insurer issuing the insurance policy;

9 (C) do not discriminate against a particular kind of
 10 insurer; and

11 (D) do not require rejection of an insurance policy because
 12 the insurance policy provides coverage in addition to the
 13 coverage required for the loan of money or extension of
 14 credit.

15 (5) Require a person to pay a separate charge:

16 (A) in connection with the issuance of insurance that is
 17 required as surety for a loan of money for real estate; or

18 (B) to substitute insurance issued by one (1) insurer for an
 19 insurance policy issued by another insurer.

20 For purposes of this subdivision, a separate charge does not
 21 include interest charged on loans of money or advancements
 22 for premiums under the terms of a loan agreement or credit
 23 agreement. This subdivision does not apply to charges that
 24 apply when the insurance producer that provides the
 25 insurance is the depository institution or the affiliate of a
 26 depository institution.

27 (6) Require of an:

28 (A) insurance producer; or

29 (B) insurer;

30 a procedure or condition that is not customarily required of
 31 an insurance producer or insurer that is connected with the
 32 depository institution or the affiliate of a depository
 33 institution.

34 (7) Use advertising or insurance promotional material that
 35 would cause a reasonable person to incorrectly believe that
 36 the federal or state government:

37 (A) is responsible for the insurance sales activity; or

38 (B) guarantees the credit;

39 of the depository institution or the affiliate of a depository
 40 institution.

41 (8) Use advertising or insurance promotional material that
 42 would cause a reasonable person to incorrectly believe that

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1 the federal or state government:

2 (A) guarantees a return on an insurance product sold by;
3 or

4 (B) is a source of payment on an insurance obligation of;
5 the depository institution or the affiliate of a depository
6 institution.

7 (9) Act as an insurance producer, unless the depository
8 institution or the affiliate of a depository institution is
9 licensed under IC 27-1-15.6.

10 (10) Solicit or sell insurance, other than credit insurance or
11 flood insurance, unless the solicitation or sale is completed
12 through documents separate from a loan of money or an
13 extension of credit.

14 (11) Include the expense of an insurance premium, other
15 than a credit insurance premium or a flood insurance
16 premium, in a primary loan of money or extension of credit
17 without the express written consent of the customer.

18 (12) Solicit or sell insurance, unless the area in which
19 insurance sales activities of the depository institution or
20 affiliate occur is, to the extent practicable, physically
21 separate from the area where retail deposits are routinely
22 accepted by the depository institution or affiliate.

23 (13) Solicit or sell insurance, unless the depository institution
24 or the affiliate of a depository institution maintains separate
25 books and records that relate to insurance transactions,
26 including files related to consumer complaints.

27 **Sec. 8. (a) A depository institution or the affiliate of a depository
28 institution that:**

29 (1) lends money or extends credit; and

30 (2) solicits insurance primarily for personal, family, or
31 household purposes;

32 shall disclose in writing to a customer that the insurance related to
33 the loan or credit extension may be purchased from an insurer or
34 insurance producer chosen by the customer, subject only to the
35 ability of the depository institution or affiliate to reasonably reject
36 an insurer or insurance producer as described in section 7(4) of
37 this chapter.

38 (b) A disclosure under subsection (a) must inform the customer
39 that the customer's choice of insurer or insurance producer does
40 not affect:

41 (1) the decision of the depository institution or the affiliate of
42 a depository institution regarding the loan or credit

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1 extension; or

2 (2) the terms of the loan or credit extension;

3 except that the depository institution or the affiliate of a depository
4 institution may impose reasonable requirements concerning the
5 creditworthiness of the insurer and the scope of insurance coverage
6 chosen, as described in section 7(4) of this chapter.

7 **Sec. 9. (a) This section applies as follows:**

8 (1) To an affiliate of a depository institution only to the
9 extent that the affiliate sells, solicits, advertises, or offers
10 insurance at the office of a depository institution or on behalf
11 of a depository institution.

12 (2) To the:

13 (A) sale of;

14 (B) solicitation for; or

15 (C) application for;

16 insurance by an individual primarily for personal, family, or
17 household purposes and only to the extent that a disclosure
18 is accurate.

19 (b) A depository institution or an affiliate of a depository
20 institution that solicits, sells, advertises, or offers insurance, and a
21 person that sells, solicits, advertises, or offers insurance on behalf
22 of a depository institution, shall disclose to a customer, in writing
23 where practicable, in a clear and conspicuous manner, and before
24 a sale of insurance, that the insurance:

25 (1) is not a deposit;

26 (2) is not insured by the Federal Deposit Insurance
27 Corporation or another federal government agency;

28 (3) is not guaranteed by the depository institution, the
29 affiliate of a depository institution, or the person that sells,
30 solicits, advertises, or offers insurance on behalf of a
31 depository institution; and

32 (4) involves investment risk including possible loss of value,
33 if appropriate.

34 **Sec. 10. (a) A depository institution that solicits, sells, advertises,
35 or offers insurance, a depository institution's affiliate that solicits,
36 sells, advertises, or offers insurance, or a person that sells, solicits,
37 advertises, or offers insurance on behalf of a depository institution
38 shall obtain from a customer to whom a disclosure is made under
39 section 9 of this chapter a written acknowledgment of receipt of the
40 disclosure:**

41 (1) when the customer receives the disclosure; or

42 (2) at the time of the initial purchase of the insurance.

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1 (b) If a solicitation for insurance is conducted by telephone, the
 2 depository institution, the affiliate of a depository institution, or
 3 the person that sells, solicits, advertises, or offers insurance on
 4 behalf of a depository institution shall:

5 (1) obtain an oral acknowledgment of receipt of the
 6 disclosure;

7 (2) maintain documentation to show that the
 8 acknowledgment was given by the customer; and

9 (3) make reasonable efforts to obtain a written
 10 acknowledgment from the customer.

11 Sec. 11. If:

12 (1) a customer consents to receive the disclosure required
 13 under section 8 of this chapter electronically; and

14 (2) the disclosure is provided to the customer in a format that
 15 the customer may retain or obtain at a later time;

16 the depository institution, the affiliate of a depository institution,
 17 or the person that sells, solicits, advertises, or offers insurance on
 18 behalf of a depository institution may provide the disclosure
 19 electronically and may obtain from the customer acknowledgment
 20 of receipt of the disclosure electronically.

21 Sec. 12. (a) The commissioner may examine and investigate the
 22 insurance activities of a person that the commissioner believes to
 23 be in violation of this chapter. A person examined or investigated
 24 under this section shall, upon reasonable notice from the
 25 department, make the insurance related books and records of the
 26 person available to the department.

27 (b) In the case of an examination or investigation of a depository
 28 institution under subsection (a), the commissioner shall, before
 29 performing the examination or investigation:

30 (1) notify the federal or state banking agency that regulates
 31 the depository institution that the commissioner intends to
 32 examine or investigate the depository institution; and

33 (2) advise the federal or state banking agency of the
 34 depository institution's suspected violation of this section.

35 Sec. 13. This chapter does not prevent a depository institution
 36 or an affiliate of a depository institution that lends money or
 37 extends credit from placing insurance on real or personal property
 38 if a customer fails to provide insurance that is required under
 39 terms of a loan agreement or credit agreement.

40 Sec. 14. A person that violates this chapter commits an unfair
 41 and deceptive act or practice in the business of insurance under
 42 IC 27-4-1-4.

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1 SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.132-2001,
 2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2002]: Sec. 4. The following are hereby defined as unfair
 4 methods of competition and unfair and deceptive acts and practices in
 5 the business of insurance:

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

8 (A) misrepresenting the terms of any policy issued or to be
 9 issued or the benefits or advantages promised thereby or the
 10 dividends or share of the surplus to be received thereon;

11 (B) making any false or misleading statement as to the
 12 dividends or share of surplus previously paid on similar
 13 policies;

14 (C) making any misleading representation or any
 15 misrepresentation as to the financial condition of any insurer,
 16 or as to the legal reserve system upon which any life insurer
 17 operates;

18 (D) using any name or title of any policy or class of policies
 19 misrepresenting the true nature thereof; or

20 (E) making any misrepresentation to any policyholder insured
 21 in any company for the purpose of inducing or tending to
 22 induce such policyholder to lapse, forfeit, or surrender his
 23 insurance.

24 (2) Making, publishing, disseminating, circulating, or placing
 25 before the public, or causing, directly or indirectly, to be made,
 26 published, disseminated, circulated, or placed before the public,
 27 in a newspaper, magazine, or other publication, or in the form of
 28 a notice, circular, pamphlet, letter, or poster, or over any radio or
 29 television station, or in any other way, an advertisement,
 30 announcement, or statement containing any assertion,
 31 representation, or statement with respect to any person in the
 32 conduct of his insurance business, which is untrue, deceptive, or
 33 misleading.

34 (3) Making, publishing, disseminating, or circulating, directly or
 35 indirectly, or aiding, abetting, or encouraging the making,
 36 publishing, disseminating, or circulating of any oral or written
 37 statement or any pamphlet, circular, article, or literature which
 38 is false, or maliciously critical of or derogatory to the financial
 39 condition of an insurer, and which is calculated to injure any
 40 person engaged in the business of insurance.

41 (4) Entering into any agreement to commit, or individually or by
 42 a concerted action committing any act of boycott, coercion, or

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1 intimidation resulting or tending to result in unreasonable
2 restraint of, or a monopoly in, the business of insurance.

3 (5) Filing with any supervisory or other public official, or
4 making, publishing, disseminating, circulating, or delivering to
5 any person, or placing before the public, or causing directly or
6 indirectly, to be made, published, disseminated, circulated,
7 delivered to any person, or placed before the public, any false
8 statement of financial condition of an insurer with intent to
9 deceive. Making any false entry in any book, report, or statement
10 of any insurer with intent to deceive any agent or examiner
11 lawfully appointed to examine into its condition or into any of its
12 affairs, or any public official to which such insurer is required by
13 law to report, or which has authority by law to examine into its
14 condition or into any of its affairs, or, with like intent, willfully
15 omitting to make a true entry of any material fact pertaining to
16 the business of such insurer in any book, report, or statement of
17 such insurer.

18 (6) Issuing or delivering or permitting agents, officers, or
19 employees to issue or deliver, agency company stock or other
20 capital stock, or benefit certificates or shares in any common law
21 corporation, or securities or any special or advisory board
22 contracts or other contracts of any kind promising returns and
23 profits as an inducement to insurance.

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

25 (A) Unfair discrimination between individuals of the same
26 class and equal expectation of life in the rates or assessments
27 charged for any contract of life insurance or of life annuity or
28 in the dividends or other benefits payable thereon, or in any
29 other of the terms and conditions of such contract; however,
30 in determining the class, consideration may be given to the
31 nature of the risk, plan of insurance, the actual or expected
32 expense of conducting the business, or any other relevant
33 factor.

34 (B) Unfair discrimination between individuals of the same
35 class involving essentially the same hazards in the amount of
36 premium, policy fees, assessments, or rates charged or made
37 for any policy or contract of accident or health insurance or
38 in the benefits payable thereunder, or in any of the terms or
39 conditions of such contract, or in any other manner whatever;
40 however, in determining the class, consideration may be
41 given to the nature of the risk, the plan of insurance, the
42 actual or expected expense of conducting the business, or any

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other relevant factor.
(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:
(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

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

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not

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specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

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

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

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

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

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or

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conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

- (A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.
- (B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.
- (C) Title insurance.
- (D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.
- (E) Insurance provided by or through motorists service clubs or associations.
- (F) Insurance that is provided to the purchaser or holder of an

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- air transportation ticket and that:
 - (i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;
 - (ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;
 - (iii) insures against baggage loss during the flight to which the ticket relates; or
 - (iv) insures against a flight cancellation to which the ticket relates.
- (14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.
- (15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.
- (16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).
- (17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.
- (18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).
- (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.
- (20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.
- (21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.
- (22) Violating IC 27-8-26 concerning genetic screening or testing.
- (23) Violating IC 27-1-15.6-3(b) concerning licensure of

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1 insurance producers.
2 **(24) Violating IC 27-1-38 concerning depository institutions.**

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