

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 500 be amended to read as follows:

- 1 Page 61, between lines 5 and 6, begin a new paragraph and insert:
2 "SECTION 44. IC 30-2-13-12.5 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12.5. (a) This section
4 applies to the following contracts entered into or established under this
5 chapter after June 30, 1999:
6 (1) Contracts for prepaid services.
7 (2) Contracts for prepaid merchandise.
8 (3) Trusts or escrows established to hold consideration paid for
9 services or merchandise subject to a contract entered into under
10 this chapter.
11 (b) A contract between a purchaser and a seller must:
12 (1) specify that the consideration for the contract is:
13 (A) cash, payable either in lump sum or installments; or
14 (B) an insurance policy that is:
15 (i) newly issued in conjunction with and integral to the
16 contract;
17 (ii) issued previously in a transaction separate and distinct
18 from the contract; or
19 (iii) both.
20 If a contract is funded with an insurance policy, the ownership
21 of the policy must be irrevocably assigned to a trustee, and the
22 seller may not borrow against, pledge, withdraw, or impair the
23 cash value of the policy;
24 (2) specify that only the purchaser, acting by written notice to the

- 1 seller, may revoke the contract within thirty (30) days after the
2 date the contract is signed by the purchaser and the seller and that
3 the contract becomes irrevocable upon the expiration of the thirty
4 (30) day period;
- 5 (3) specify that, if the contract is revoked, the seller shall refund
6 and return to the purchaser, without interest, the cash or insurance
7 policy used to fund the contract;
- 8 (4) specify that not more than thirty (30) days after the contract is
9 signed by the purchaser and the seller, the whole of the cash or
10 insurance policy serving as consideration for the contract must be
11 deposited into a trust or escrow authorized by subsection (c) or
12 (d). However, a seller may elect to serve as trustee of a previously
13 existing life insurance contract;
- 14 (5) except as provided in subsection (f), unconditionally require
15 that the seller shall deliver all services or merchandise, or both,
16 specified in the contract and receive as consideration for the
17 delivery of services or merchandise, or both, only the cash or
18 insurance policy held in trust or escrow without regard to the
19 solvency of the insurer or the adequacy or loss in value of any
20 cash deposit or insurance policy used to fund a contract;
- 21 (6) except as provided in subsection (f), prohibit a seller from
22 imposing additional charges to recover any shortage or difference
23 between the retail prices for services or merchandise, or both, in
24 effect on the date of delivery of the services or merchandise, or
25 both, and the value of the trust or escrow applicable to the
26 contract on the date of delivery;
- 27 (7) require that a seller accepting the transfer of a contract
28 permitted under section 13 of this chapter shall honor the
29 requirements and obligations of the contract;
- 30 (8) permit the seller to assess a finance charge on a contract sold
31 on an installment basis and require that the seller disclose to the
32 purchaser the applicable requirements of federal and Indiana law;
- 33 (9) provide that the contract must comply with the following
34 requirements:
- 35 (A) The contract must be made in a form that is:
- 36 (i) written in clear and understandable language; and
37 (ii) printed in a size and style of type that is easy to read.
- 38 (B) The contract must describe the services, merchandise, or
39 cash advance items being purchased.
- 40 (C) The contract must identify the following by name, address,
41 and telephone number:
- 42 (i) The seller.
43 (ii) The purchaser.
44 (iii) The contract beneficiary if the beneficiary is an
45 individual other than the purchaser.
- 46 (D) The contract must contain the seller's certificate of

- 1 authority number and the date of the contract.
- 2 (E) The contract must provide that if an item of the particular
- 3 services or merchandise specified in the contract is
- 4 unavailable at the time of delivery, the seller shall deliver
- 5 services or merchandise similar in style, quality, and of equal
- 6 value to the unavailable item in the place of the item.
- 7 (F) The contract must disclose the precise manner in which the
- 8 contract is to be funded by:
- 9 (i) identifying the consideration for the contract;
- 10 (ii) identifying the name, number, if known, and issuer of
- 11 any insurance policy used to fund the contract; and
- 12 (iii) including the identity and location of the trustee or
- 13 escrow agent who is to hold the trust or escrow.
- 14 (G) The contract must disclose that the seller reserves the right
- 15 to assess an extra charge for:
- 16 (i) transportation costs;
- 17 (ii) services or merchandise incurred in the transport of
- 18 human remains a distance greater than twenty-five (25)
- 19 miles from the seller's place of business; and
- 20 (iii) service charges necessarily incident to the transport of
- 21 human remains and in excess of those service charges
- 22 specified in the contract.
- 23 (H) The contract must disclose the following:
- 24 (i) The amount, if any, the seller has elected to receive under
- 25 subsection (c)(1) or subsection (d)(6).
- 26 (ii) That a commission or fee may be paid to the seller or the
- 27 seller's agent on a contract funded under ~~subsection~~
- 28 ~~(b)(1)(B)(i)~~ **subdivision (1)(B)(i)**.
- 29 (10) specify that a purchaser has the unrestricted right to
- 30 designate one (1) or more successor sellers to whom the contract
- 31 may be transferred under section 13 of this chapter, but that such
- 32 a transfer is effective only with the consent of the newly
- 33 designated seller and upon the fulfillment of the other
- 34 requirements of section 13 of this chapter;
- 35 (11) specify that if cash advance items are funded in the contract,
- 36 the seller agrees to deliver the cash advance items under one (1)
- 37 of the following alternatives:
- 38 (A) Delivery is unconditionally guaranteed at the option of the
- 39 seller.
- 40 (B) Delivery is conditionally guaranteed for a seller and will
- 41 be equal in value to the total value of the trust or escrow
- 42 account maintained for the purchaser multiplied by the
- 43 percentage of the total original contract price represented by
- 44 cash advance items;
- 45 (12) specify that a release from trust or escrow shall occur only
- 46 upon the seller's delivery of services or merchandise, or both;

- 1 (13) permit, at the option of the seller, the incorporation of the
 2 trust or escrow language contained in subsection (c) or (d)
 3 directly into the contract;
- 4 (14) prohibit the seller from charging any service, transaction, or
 5 other type of fee or charge unless the fee is:
- 6 (A) authorized under subsections (c)(1) and (d)(6) and section
 7 27 of this chapter; or
- 8 (B) included within the definitions contained in section 8 or
 9 11.5 of this chapter.
- 10 (c) A trust account authorized and established under this chapter
 11 must do all of the following:
- 12 (1) Be irrevocable and require either of the following:
- 13 (A) The seller deposit the insurance policy used to fund the
 14 contract into the trust account. However, for contracts funded
 15 after June 30, 1995, with a previously issued insurance policy,
 16 the seller may serve instead of a trustee if the seller is qualified
 17 to do so under section 11(c) of this chapter.
- 18 (B) The seller deposit the cash used to fund the contract into
 19 the trust account. However, as consideration for the sale of the
 20 contract and any expense incurred by the seller in conjunction
 21 with the sale of the contract, the contract must permit the seller
 22 to notify, within a ten (10) day period following the date the
 23 contract becomes irrevocable, the trustee of its election to
 24 receive only up to ten percent (10%) of the seller's original
 25 contract price for services or merchandise, or both.
- 26 (2) Designate the seller as the beneficiary of the trust.
- 27 (3) Designate a trustee qualified under this chapter and authorize
 28 the trustee to assess the charges authorized under section 18 of
 29 this chapter.
- 30 (4) Require that a separate account be maintained in the name of
 31 each purchaser.
- 32 (5) Require that any interest, dividend, or accumulation in the
 33 account be reinvested and added to the principal.
- 34 (6) Permit the assets of the several, separate accounts to be
 35 commingled for investment purposes.
- 36 (7) Require that on receipt of the seller's proof of delivery of
 37 services or merchandise the trustee shall remit to the seller the
 38 full amount in trust applicable to the purchaser's contract and all
 39 of the accumulated interest.
- 40 (8) Permit the seller to retain the remaining amount if the amount
 41 in the trust account is greater than the seller's total current retail
 42 price of all services and merchandise subject to the contract at the
 43 time of delivery of all services or merchandise subject to the
 44 contract. However, in the case of a contract funded under
 45 subsection (b)(1)(B)(ii), the seller may not retain the remaining
 46 amount but must pay the remaining amount to the entity or

1 individual designated by the insured as the beneficiary of the
 2 death benefit proceeds not later than sixty (60) days after the
 3 receipt and deposit of the proceeds by the seller. The seller may
 4 not qualify as a beneficiary of the remaining amount or the
 5 insurance death benefit. In the case of all other contracts funded
 6 under this chapter, the seller may opt to return the remaining
 7 amount to the individual designated by the purchaser to receive
 8 the remainder or to the purchaser's estate.

9 (d) An escrow account authorized and established under this chapter
 10 must do all of the following:

11 (1) Be irrevocable and require that the seller deposit all cash or
 12 the insurance policy used to fund the contract into the escrow
 13 account.

14 (2) Designate the seller as the recipient of the escrow funds.

15 (3) Designate an escrow agent qualified under this chapter to act
 16 as escrow agent and authorize the escrow agent to assess the
 17 charges authorized under section 18 of this chapter.

18 (4) Require that the escrow account be maintained in the name of
 19 the seller and serve as a depository for all cash or insurance
 20 policies used to fund contracts sold by the seller.

21 (5) Permit the investment of and commingling of cash for
 22 investment purposes.

23 (6) Permit the seller to receive an administrative or service fee at
 24 the option of the seller. The seller may opt to receive the fee after
 25 the day following the date the contract becomes irrevocable. The
 26 amount of the fee may not exceed ten percent (10%) of the seller's
 27 total contract price for services or merchandise or both.

28 (7) Require that on delivery of services or merchandise, the
 29 escrow agent shall remit to the seller an amount equal to:

30 (A) the seller's original retail price as set forth in the contract
 31 for the services or merchandise delivered; minus

32 (B) the amount, if any, received by the seller under subdivision
 33 (6).

34 (8) Permit the seller to receive monthly payments of the interest,
 35 **gains, and dividends** earned and the ~~appreciation~~ **accumulation**
 36 in the value of the escrow assets to the extent that the total value
 37 of the escrow after a payment authorized under this subdivision
 38 is not less than:

39 (A) the original contract value of all services or merchandise
 40 under the contracts, or parts of the contracts that remain
 41 undelivered; minus

42 (B) the amounts, if any, received by the seller under
 43 subdivision (6).

44 (e) A trust account or an escrow account established under this
 45 section must contain a concise written description of all the provisions
 46 of this chapter that apply to the account.

1 (f) A seller's guarantee of delivery of all services or merchandise
2 subject to a contract sold by the seller or transferred to a seller is
3 unconditional except in the instance of one (1) of the following
4 circumstances:

5 (1) An installment contract funded with cash or an insurance
6 policy issued in conjunction with the contract is guaranteed to the
7 extent of the cash paid or death benefits available at the time of
8 death of the individual for whom services or merchandise are to
9 be provided.

10 (2) A contract funded with an insurance policy issued previously
11 and not in conjunction with the contract is guaranteed to the
12 extent of the death benefit proceeds available at the time of the
13 individual for whom services or merchandise are to be provided.

14 (3) A contract funded with an insurance policy issued in
15 conjunction with the contract, but having a limited or qualified
16 death benefit period, is guaranteed to the extent of the death
17 benefit proceeds available at the time of the death of the
18 individual for whom services or merchandise are to be provided.

19 (4) A transportation expense incurred by the seller while
20 transporting human remains a distance greater than twenty-five
21 (25) miles from the seller's place of business, plus any charge for
22 services or merchandise necessarily incident to the transport of
23 the human remains.

24 (5) The seller agrees to conditionally guarantee the delivery of
25 cash advance items under subsection (b)(11)(B).

26 In the instance of unguaranteed delivery, the seller may reduce the
27 value or number of the services or merchandise subject to the contract
28 or cash advance items delivered or deliver the services or merchandise
29 in full on the condition that the seller receives adequate consideration
30 to compensate the seller for the unguaranteed part of the contract.

31 (g) The entire value of an escrow or trust established under this
32 chapter may not be considered as a resource in determining a person's
33 eligibility for Medicaid under IC 12-15-2-17.

34 (h) This chapter does not prohibit a purchaser from immediately
35 making the trust or escrow required under this chapter irrevocable and
36 assigning ownership of an insurance policy used to fund a contract to
37 obtain favorable consideration for Medicaid, Supplemental Security
38 Income, or another public assistance program under federal or state
39 law.

1 (i) A seller may not accept or deposit into a trust or escrow account
2 cash, an insurance policy, or any other property as consideration for
3 services or merchandise to be provided in the future except in
4 conjunction with a contract authorized by this chapter."

5 Renumber all SECTIONS consecutively.
 (Reference is to ESB 500 as printed April 3, 2007.)

Representative Espich