

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1452 be amended to read as follows:

- 1           Page 25, between lines 29 and 30, begin a new paragraph and insert:  
2           "SECTION 16. IC 27-4-1-4, AS AMENDED BY P.L.1-2006,  
3           SECTION 487, IS AMENDED TO READ AS FOLLOWS  
4           [EFFECTIVE JULY 1, 2007]: Sec. 4. The following are hereby defined  
5           as unfair methods of competition and unfair and deceptive acts and  
6           practices in the business of insurance:  
7           (1) Making, issuing, circulating, or causing to be made, issued, or  
8           circulated, any estimate, illustration, circular, or statement:  
9           (A) misrepresenting the terms of any policy issued or to be  
10           issued or the benefits or advantages promised thereby or the  
11           dividends or share of the surplus to be received thereon;  
12           (B) making any false or misleading statement as to the  
13           dividends or share of surplus previously paid on similar  
14           policies;  
15           (C) making any misleading representation or any  
16           misrepresentation as to the financial condition of any insurer,  
17           or as to the legal reserve system upon which any life insurer  
18           operates;  
19           (D) using any name or title of any policy or class of policies  
20           misrepresenting the true nature thereof; or  
21           (E) making any misrepresentation to any policyholder insured  
22           in any company for the purpose of inducing or tending to  
23           induce such policyholder to lapse, forfeit, or surrender the  
24           policyholder's insurance.  
25           (2) Making, publishing, disseminating, circulating, or placing  
26           before the public, or causing, directly or indirectly, to be made,  
27           published, disseminated, circulated, or placed before the public,  
28           in a newspaper, magazine, or other publication, or in the form of  
29           a notice, circular, pamphlet, letter, or poster, or over any radio or  
30           television station, or in any other way, an advertisement,  
31           announcement, or statement containing any assertion,

- 1 representation, or statement with respect to any person in the  
2 conduct of the person's insurance business, which is untrue,  
3 deceptive, or misleading.
- 4 (3) Making, publishing, disseminating, or circulating, directly or  
5 indirectly, or aiding, abetting, or encouraging the making,  
6 publishing, disseminating, or circulating of any oral or written  
7 statement or any pamphlet, circular, article, or literature which is  
8 false, or maliciously critical of or derogatory to the financial  
9 condition of an insurer, and which is calculated to injure any  
10 person engaged in the business of insurance.
- 11 (4) Entering into any agreement to commit, or individually or by  
12 a concerted action committing any act of boycott, coercion, or  
13 intimidation resulting or tending to result in unreasonable  
14 restraint of, or a monopoly in, the business of insurance.
- 15 (5) Filing with any supervisory or other public official, or making,  
16 publishing, disseminating, circulating, or delivering to any person,  
17 or placing before the public, or causing directly or indirectly, to  
18 be made, published, disseminated, circulated, delivered to any  
19 person, or placed before the public, any false statement of  
20 financial condition of an insurer with intent to deceive. Making  
21 any false entry in any book, report, or statement of any insurer  
22 with intent to deceive any agent or examiner lawfully appointed  
23 to examine into its condition or into any of its affairs, or any  
24 public official to which such insurer is required by law to report,  
25 or which has authority by law to examine into its condition or into  
26 any of its affairs, or, with like intent, willfully omitting to make a  
27 true entry of any material fact pertaining to the business of such  
28 insurer in any book, report, or statement of such insurer.
- 29 (6) Issuing or delivering or permitting agents, officers, or  
30 employees to issue or deliver, agency company stock or other  
31 capital stock, or benefit certificates or shares in any common law  
32 corporation, or securities or any special or advisory board  
33 contracts or other contracts of any kind promising returns and  
34 profits as an inducement to insurance.
- 35 (7) Making or permitting any of the following:
- 36 (A) Unfair discrimination between individuals of the same  
37 class and equal expectation of life in the rates or assessments  
38 charged for any contract of life insurance or of life annuity or  
39 in the dividends or other benefits payable thereon, or in any  
40 other of the terms and conditions of such contract; however, in  
41 determining the class, consideration may be given to the  
42 nature of the risk, plan of insurance, the actual or expected  
43 expense of conducting the business, or any other relevant  
44 factor.
- 45 (B) Unfair discrimination between individuals of the same  
46 class involving essentially the same hazards in the amount of  
47 premium, policy fees, assessments, or rates charged or made

1 for any policy or contract of accident or health insurance or in  
 2 the benefits payable thereunder, or in any of the terms or  
 3 conditions of such contract, or in any other manner whatever;  
 4 however, in determining the class, consideration may be given  
 5 to the nature of the risk, the plan of insurance, the actual or  
 6 expected expense of conducting the business, or any other  
 7 relevant factor.

8 (C) Excessive or inadequate charges for premiums, policy  
 9 fees, assessments, or rates, or making or permitting any unfair  
 10 discrimination between persons of the same class involving  
 11 essentially the same hazards, in the amount of premiums,  
 12 policy fees, assessments, or rates charged or made for:

13 (i) policies or contracts of reinsurance or joint reinsurance,  
 14 or abstract and title insurance;

15 (ii) policies or contracts of insurance against loss or damage  
 16 to aircraft, or against liability arising out of the ownership,  
 17 maintenance, or use of any aircraft, or of vessels or craft,  
 18 their cargoes, marine builders' risks, marine protection and  
 19 indemnity, or other risks commonly insured under marine,  
 20 as distinguished from inland marine, insurance; or

21 (iii) policies or contracts of any other kind or kinds of  
 22 insurance whatsoever.

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

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

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

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

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

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

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

31 (9) Requiring, as a condition precedent to loaning money upon the  
32 security of a mortgage upon real property, that the owner of the  
33 property to whom the money is to be loaned negotiate any policy  
34 of insurance covering such real property through a particular  
35 insurance producer or broker or brokers. However, this  
36 subdivision shall not prevent the exercise by any lender of the  
37 lender's right to approve or disapprove of the insurance company  
38 selected by the borrower to underwrite the insurance.

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

42 (11) Monopolizing or attempting to monopolize or combining or  
43 conspiring with any other person or persons to monopolize any  
44 part of commerce in the business of insurance. However,  
45 participation as a member, director, or officer in the activities of  
46 any nonprofit organization of insurance producers or other  
47 workers in the insurance business shall not be interpreted, in

1           itself, to constitute a combination in restraint of trade or as  
 2           combining to create a monopoly as provided in this subdivision  
 3           and subdivision (10). The enumeration in this chapter of specific  
 4           unfair methods of competition and unfair or deceptive acts and  
 5           practices in the business of insurance is not exclusive or  
 6           restrictive or intended to limit the powers of the commissioner or  
 7           department or of any court of review under section 8 of this  
 8           chapter.

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

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

26                (A) Insurance issued to credit unions or members of credit  
 27                unions in connection with the purchase of shares in such credit  
 28                unions.

29                (B) Insurance employed as a means of guaranteeing the  
 30                performance of goods and designed to benefit the purchasers  
 31                or users of such goods.

32                (C) Title insurance.

33                (D) Insurance written in connection with an indebtedness and  
 34                intended as a means of repaying such indebtedness in the  
 35                event of the death or disability of the insured.

36                (E) Insurance provided by or through motorists service clubs  
 37                or associations.

38                (F) Insurance that is provided to the purchaser or holder of an  
 39                air transportation ticket and that:

40                   (i) insures against death or nonfatal injury that occurs during  
 41                   the flight to which the ticket relates;

42                   (ii) insures against personal injury or property damage that  
 43                   occurs during travel to or from the airport in a common  
 44                   carrier immediately before or after the flight;

45                   (iii) insures against baggage loss during the flight to which  
 46                   the ticket relates; or

47                   (iv) insures against a flight cancellation to which the ticket

- 1 relates.
- 2 (14) Refusing, because of the for-profit status of a hospital or  
3 medical facility, to make payments otherwise required to be made  
4 under a contract or policy of insurance for charges incurred by an  
5 insured in such a for-profit hospital or other for-profit medical  
6 facility licensed by the state department of health.
- 7 (15) Refusing to insure an individual, refusing to continue to issue  
8 insurance to an individual, limiting the amount, extent, or kind of  
9 coverage available to an individual, or charging an individual a  
10 different rate for the same coverage, solely because of that  
11 individual's blindness or partial blindness, except where the  
12 refusal, limitation, or rate differential is based on sound actuarial  
13 principles or is related to actual or reasonably anticipated  
14 experience.
- 15 (16) Committing or performing, with such frequency as to  
16 indicate a general practice, unfair claim settlement practices (as  
17 defined in section 4.5 of this chapter).
- 18 (17) Between policy renewal dates, unilaterally canceling an  
19 individual's coverage under an individual or group health  
20 insurance policy solely because of the individual's medical or  
21 physical condition.
- 22 (18) Using a policy form or rider that would permit a cancellation  
23 of coverage as described in subdivision (17).
- 24 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1  
25 concerning motor vehicle insurance rates.
- 26 (20) Violating IC 27-8-21-2 concerning advertisements referring  
27 to interest rate guarantees.
- 28 (21) Violating IC 27-8-24.3 concerning insurance and health plan  
29 coverage for victims of abuse.
- 30 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 31 (23) Violating IC 27-1-15.6-3(b) concerning licensure of  
32 insurance producers.
- 33 (24) Violating IC 27-1-38 concerning depository institutions.
- 34 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning  
35 the resolution of an appealed grievance decision.
- 36 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC  
37 27-8-5-19.2.
- 38 (27) Violating IC 27-2-21 concerning use of credit information.
- 39 (28) Violating IC 27-4-9-3 concerning recommendations to senior  
40 consumers.
- 41 **(29) Violating IC 27-8-11-3(g) concerning accident and**  
42 **sickness insurance reimbursement agreements."**
- 43 Page 44, between lines 7 and 8, begin a new paragraph and insert:  
44 "SECTION 25. IC 27-8-11-3 IS AMENDED TO READ AS  
45 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) An insurer may:  
46 (1) enter into agreements with providers relating to terms and  
47 conditions of reimbursement for health care services that may be

- 1 rendered to insureds of the insurer, including agreements relating  
2 to the amounts to be charged the insured for services rendered or  
3 the terms and conditions for activities intended to reduce  
4 inappropriate care;
- 5 (2) issue or administer policies in this state that include incentives  
6 for the insured to utilize the services of a provider that has entered  
7 into an agreement with the insurer under subdivision (1); and
- 8 (3) issue or administer policies in this state that provide for  
9 reimbursement for expenses of health care services only if the  
10 services have been rendered by a provider that has entered into an  
11 agreement with the insurer under subdivision (1).
- 12 (b) Before entering into any agreement under subsection (a)(1), an  
13 insurer shall establish terms and conditions that must be met by  
14 providers wishing to enter into an agreement with the insurer under  
15 subsection (a)(1). These terms and conditions may not discriminate  
16 unreasonably against or among providers. For the purposes of this  
17 subsection, neither differences in prices among hospitals or other  
18 institutional providers produced by a process of individual negotiation  
19 nor price differences among other providers in different geographical  
20 areas or different specialties constitutes unreasonable discrimination.  
21 Upon request by a provider seeking to enter into an agreement with an  
22 insurer under subsection (a)(1), the insurer shall make available to the  
23 provider a written statement of the terms and conditions that must be  
24 met by providers wishing to enter into an agreement with the insurer  
25 under subsection (a)(1).
- 26 (c) No hospital, physician, pharmacist, or other provider designated  
27 in IC 27-8-6-1 willing to meet the terms and conditions of agreements  
28 described in this section may be denied the right to enter into an  
29 agreement under subsection (a)(1). When an insurer denies a provider  
30 the right to enter into an agreement with the insurer under subsection  
31 (a)(1) on the grounds that the provider does not satisfy the terms and  
32 conditions established by the insurer for providers entering into  
33 agreements with the insurer, the insurer shall provide the provider with  
34 a written notice that:
- 35 (1) explains the basis of the insurer's denial; and  
36 (2) states the specific terms and conditions that the provider, in  
37 the opinion of the insurer, does not satisfy.
- 38 (d) In no event may an insurer deny or limit reimbursement to an  
39 insured under this chapter on the grounds that the insured was not  
40 referred to the provider by a person acting on behalf of or under an  
41 agreement with the insurer.
- 42 (e) No cause of action shall arise against any person or insurer for:  
43 (1) disclosing information as required by this section; or  
44 (2) the subsequent use of the information by unauthorized  
45 individuals.
- 46 Nor shall such a cause of action arise against any person or provider for  
47 furnishing personal or privileged information to an insurer. However,

1 this subsection provides no immunity for disclosing or furnishing false  
2 information with malice or willful intent to injure any person, provider,  
3 or insurer.

4 (f) Nothing in this chapter abrogates the privileges and immunities  
5 established in IC 34-30-15 (or IC 34-4-12.6 before its repeal).

6 **(g) An agreement described in this section may not include**  
7 **terms or conditions that deny a provider the right to:**

8 **(1) after all administrative appeals and remedies have been**  
9 **exhausted, enter into a class action suit; or**

10 **(2) engage attorneys or other professional consultants while**  
11 **negotiating an agreement under this section.**

12 **A violation of this subsection is an unfair method of competition**  
13 **and an unfair and deceptive act or practice under IC 27-4-1-4."**

14 Renumber all SECTIONS consecutively.

(Reference is to EHB 1452 as printed March 27, 2007.)

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Senator MILLER