

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 87, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.1-2009,  
4 SECTION 146, IS AMENDED TO READ AS FOLLOWS  
5 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The following are hereby  
6 defined as unfair methods of competition and unfair and deceptive acts  
7 and practices in the business of insurance:  
8           (1) Making, issuing, circulating, or causing to be made, issued, or  
9           circulated, any estimate, illustration, circular, or statement:  
10           (A) misrepresenting the terms of any policy issued or to be  
11           issued or the benefits or advantages promised thereby or the  
12           dividends or share of the surplus to be received thereon;  
13           (B) making any false or misleading statement as to the  
14           dividends or share of surplus previously paid on similar  
15           policies;  
16           (C) making any misleading representation or any  
17           misrepresentation as to the financial condition of any insurer,  
18           or as to the legal reserve system upon which any life insurer  
19           operates;  
20           (D) using any name or title of any policy or class of policies

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

1 true entry of any material fact pertaining to the business of such  
2 insurer in any book, report, or statement of such insurer.

3 (6) Issuing or delivering or permitting agents, officers, or  
4 employees to issue or deliver, agency company stock or other  
5 capital stock, or benefit certificates or shares in any common law  
6 corporation, or securities or any special or advisory board  
7 contracts or other contracts of any kind promising returns and  
8 profits as an inducement to insurance.

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

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

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

29 (C) Excessive or inadequate charges for premiums, policy  
30 fees, assessments, or rates, or making or permitting any unfair  
31 discrimination between persons of the same class involving  
32 essentially the same hazards, in the amount of premiums,  
33 policy fees, assessments, or rates charged or made for:

34 (i) policies or contracts of reinsurance or joint reinsurance,  
35 or abstract and title insurance;

36 (ii) policies or contracts of insurance against loss or damage  
37 to aircraft, or against liability arising out of the ownership,  
38 maintenance, or use of any aircraft, or of vessels or craft,

1                   their cargoes, marine builders' risks, marine protection and  
2                   indemnity, or other risks commonly insured under marine,  
3                   as distinguished from inland marine, insurance; or  
4                   (iii) policies or contracts of any other kind or kinds of  
5                   insurance whatsoever.

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

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

35                 (A) Paying bonuses to policyholders or otherwise abating their  
36                 premiums in whole or in part out of surplus accumulated from  
37                 nonparticipating insurance, so long as any such bonuses or  
38                 abatements of premiums are fair and equitable to policyholders

- 1 and for the best interests of the company and its policyholders.
- 2 (B) In the case of life insurance policies issued on the  
3 industrial debit plan, making allowance to policyholders who  
4 have continuously for a specified period made premium  
5 payments directly to an office of the insurer in an amount  
6 which fairly represents the saving in collection expense.
- 7 (C) Readjustment of the rate of premium for a group insurance  
8 policy based on the loss or expense experience thereunder, at  
9 the end of the first year or of any subsequent year of insurance  
10 thereunder, which may be made retroactive only for such  
11 policy year.
- 12 (D) Paying by an insurer or insurance producer thereof duly  
13 licensed as such under the laws of this state of money,  
14 commission, or brokerage, or giving or allowing by an insurer  
15 or such licensed insurance producer thereof anything of value,  
16 for or on account of the solicitation or negotiation of policies  
17 or other contracts of any kind or kinds, to a broker, an  
18 insurance producer, or a solicitor duly licensed under the laws  
19 of this state, but such broker, insurance producer, or solicitor  
20 receiving such consideration shall not pay, give, or allow  
21 credit for such consideration as received in whole or in part,  
22 directly or indirectly, to the insured by way of rebate.
- 23 (9) Requiring, as a condition precedent to loaning money upon the  
24 security of a mortgage upon real property, that the owner of the  
25 property to whom the money is to be loaned negotiate any policy  
26 of insurance covering such real property through a particular  
27 insurance producer or broker or brokers. However, this  
28 subdivision shall not prevent the exercise by any lender of the  
29 lender's right to approve or disapprove of the insurance company  
30 selected by the borrower to underwrite the insurance.
- 31 (10) Entering into any contract, combination in the form of a trust  
32 or otherwise, or conspiracy in restraint of commerce in the  
33 business of insurance.
- 34 (11) Monopolizing or attempting to monopolize or combining or  
35 conspiring with any other person or persons to monopolize any  
36 part of commerce in the business of insurance. However,  
37 participation as a member, director, or officer in the activities of  
38 any nonprofit organization of insurance producers or other

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

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

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

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

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

33 (C) Title insurance.

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

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

- 1 (F) Insurance that is provided to the purchaser or holder of an  
2 air transportation ticket and that:
- 3 (i) insures against death or nonfatal injury that occurs during  
4 the flight to which the ticket relates;
- 5 (ii) insures against personal injury or property damage that  
6 occurs during travel to or from the airport in a common  
7 carrier immediately before or after the flight;
- 8 (iii) insures against baggage loss during the flight to which  
9 the ticket relates; or
- 10 (iv) insures against a flight cancellation to which the ticket  
11 relates.
- 12 (14) Refusing, because of the for-profit status of a hospital or  
13 medical facility, to make payments otherwise required to be made  
14 under a contract or policy of insurance for charges incurred by an  
15 insured in such a for-profit hospital or other for-profit medical  
16 facility licensed by the state department of health.
- 17 (15) Refusing to insure an individual, refusing to continue to issue  
18 insurance to an individual, limiting the amount, extent, or kind of  
19 coverage available to an individual, or charging an individual a  
20 different rate for the same coverage, solely because of that  
21 individual's blindness or partial blindness, except where the  
22 refusal, limitation, or rate differential is based on sound actuarial  
23 principles or is related to actual or reasonably anticipated  
24 experience.
- 25 (16) Committing or performing, with such frequency as to  
26 indicate a general practice, unfair claim settlement practices (as  
27 defined in section 4.5 of this chapter).
- 28 (17) Between policy renewal dates, unilaterally canceling an  
29 individual's coverage under an individual or group health  
30 insurance policy solely because of the individual's medical or  
31 physical condition.
- 32 (18) Using a policy form or rider that would permit a cancellation  
33 of coverage as described in subdivision (17).
- 34 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1  
35 concerning motor vehicle insurance rates.
- 36 (20) Violating IC 27-8-21-2 concerning advertisements referring  
37 to interest rate guarantees.
- 38 (21) Violating IC 27-8-24.3 concerning insurance and health plan

- 1 coverage for victims of abuse.
- 2 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 3 (23) Violating IC 27-1-15.6-3(b) concerning licensure of  
4 insurance producers.
- 5 (24) Violating IC 27-1-38 concerning depository institutions.
- 6 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning  
7 the resolution of an appealed grievance decision.
- 8 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired  
9 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,  
10 2007, and repealed).
- 11 (27) Violating IC 27-2-21 concerning use of credit information.
- 12 (28) Violating IC 27-4-9-3 concerning recommendations to  
13 consumers.
- 14 (29) Engaging in dishonest or predatory insurance practices in  
15 marketing or sales of insurance to members of the United States  
16 Armed Forces as:
- 17 (A) described in the federal Military Personnel Financial  
18 Services Protection Act, P.L.109-290; or
- 19 (B) defined in rules adopted under subsection (b).
- 20 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated  
21 life insurance.
- 22 **(31) Violating IC 27-8-11-4.7 or IC 27-13-34-15.2 concerning**  
23 **contracts for dental services.**
- 24 (b) Except with respect to federal insurance programs under  
25 Subchapter III of Chapter 19 of Title 38 of the United States Code, the  
26 commissioner may, consistent with the federal Military Personnel  
27 Financial Services Protection Act (P.L.109-290), adopt rules under  
28 IC 4-22-2 to:
- 29 (1) define; and
- 30 (2) while the members are on a United States military installation  
31 or elsewhere in Indiana, protect members of the United States  
32 Armed Forces from;  
33 dishonest or predatory insurance practices.".
- 34 Page 1, line 5, after "the" insert "**actual**".
- 35 Page 1, line 9, delete "another" and insert "**any other**".
- 36 Page 1, line 15, after "(c)" insert "**An insurer may not provide**  
37 **merely de minimis reimbursement or coverage in an effort to avoid**  
38 **the requirements of this section.**



- 1           **(d)".**
- 2           Page 1, between lines 16 and 17, begin a new paragraph and insert:
- 3           **"(e) A violation of this section is an unfair and deceptive act in**
- 4           **the business of insurance under IC 27-4-1-4."**
- 5           Page 2, line 5, after "the" insert "**actual**".
- 6           Page 2, line 8, delete "another" and insert "**any other**".
- 7           Page 2, line 16, after "(c)" insert "**A limited service health**
- 8           **maintenance organization may not provide merely de minimis**
- 9           **reimbursement or coverage in an effort to avoid the requirements**
- 10          **of this section.**
- 11          **(d)".**
- 12          Page 2, after line 17, begin a new paragraph and insert:
- 13          **"(e) A violation of this section is an unfair and deceptive act in**
- 14          **the business of insurance under IC 27-4-1-4."**
- 15          Renumber all SECTIONS consecutively.  
(Reference is to SB 87 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 8, Nays 0.

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**Miller**

**Chairperson**