

# SENATE BILL No. 208

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-4-1-4; IC 27-8-11-4.7; IC 27-13-34-15.2.

**Synopsis:** Contracts for dental services. Prohibits dental insurers and health maintenance organizations from requiring dentists to accept certain payments.

**Effective:** July 1, 2013.

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January 7, 2013, read first time and referred to Committee on Health and Provider Services.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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## SENATE BILL No. 208



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 27-4-1-4, AS AMENDED BY P.L.67-2011,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 4. (a) 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, or
- 7 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;



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

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1 employees to issue or deliver, agency company stock or other  
 2 capital stock, or benefit certificates or shares in any common law  
 3 corporation, or securities or any special or advisory board  
 4 contracts or other contracts of any kind promising returns and  
 5 profits as an inducement to insurance.

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

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

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

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

31 (i) policies or contracts of reinsurance or joint reinsurance,  
 32 or abstract and title insurance;

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

39 (iii) policies or contracts of any other kind or kinds of  
 40 insurance whatsoever.

41 However, nothing contained in clause (C) shall be construed to  
 42 apply to any of the kinds of insurance referred to in clauses (A)

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1 and (B) nor to reinsurance in relation to such kinds of insurance.  
 2 Nothing in clause (A), (B), or (C) shall be construed as making or  
 3 permitting any excessive, inadequate, or unfairly discriminatory  
 4 charge or rate or any charge or rate determined by the department  
 5 or commissioner to meet the requirements of any other insurance  
 6 rate regulatory law of this state.

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

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

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

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

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

12 (9) Requiring, as a condition precedent to loaning money upon the  
 13 security of a mortgage upon real property, that the owner of the  
 14 property to whom the money is to be loaned negotiate any policy  
 15 of insurance covering such real property through a particular  
 16 insurance producer or broker or brokers. However, this  
 17 subdivision shall not prevent the exercise by any lender of the  
 18 lender's right to approve or disapprove of the insurance company  
 19 selected by the borrower to underwrite the insurance.

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

23 (11) Monopolizing or attempting to monopolize or combining or  
 24 conspiring with any other person or persons to monopolize any  
 25 part of commerce in the business of insurance. However,  
 26 participation as a member, director, or officer in the activities of  
 27 any nonprofit organization of insurance producers or other  
 28 workers in the insurance business shall not be interpreted, in  
 29 itself, to constitute a combination in restraint of trade or as  
 30 combining to create a monopoly as provided in this subdivision  
 31 and subdivision (10). The enumeration in this chapter of specific  
 32 unfair methods of competition and unfair or deceptive acts and  
 33 practices in the business of insurance is not exclusive or  
 34 restrictive or intended to limit the powers of the commissioner or  
 35 department or of any court of review under section 8 of this  
 36 chapter.

37 (12) Requiring as a condition precedent to the sale of real or  
 38 personal property under any contract of sale, conditional sales  
 39 contract, or other similar instrument or upon the security of a  
 40 chattel mortgage, that the buyer of such property negotiate any  
 41 policy of insurance covering such property through a particular  
 42 insurance company, insurance producer, or broker or brokers.

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1 However, this subdivision shall not prevent the exercise by any  
 2 seller of such property or the one making a loan thereon of the  
 3 right to approve or disapprove of the insurance company selected  
 4 by the buyer to underwrite the insurance.

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

12 (A) Insurance issued to credit unions or members of credit  
 13 unions in connection with the purchase of shares in such credit  
 14 unions.

15 (B) Insurance employed as a means of guaranteeing the  
 16 performance of goods and designed to benefit the purchasers  
 17 or users of such goods.

18 (C) Title insurance.

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

22 (E) Insurance provided by or through motorists service clubs  
 23 or associations.

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

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

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

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

33 (iv) insures against a flight cancellation to which the ticket  
 34 relates.

35 (14) Refusing, because of the for-profit status of a hospital or  
 36 medical facility, to make payments otherwise required to be made  
 37 under a contract or policy of insurance for charges incurred by an  
 38 insured in such a for-profit hospital or other for-profit medical  
 39 facility licensed by the state department of health.

40 (15) Refusing to insure an individual, refusing to continue to issue  
 41 insurance to an individual, limiting the amount, extent, or kind of  
 42 coverage available to an individual, or charging an individual a

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- 1 different rate for the same coverage, solely because of that  
 2 individual's blindness or partial blindness, except where the  
 3 refusal, limitation, or rate differential is based on sound actuarial  
 4 principles or is related to actual or reasonably anticipated  
 5 experience.
- 6 (16) Committing or performing, with such frequency as to  
 7 indicate a general practice, unfair claim settlement practices (as  
 8 defined in section 4.5 of this chapter).
- 9 (17) Between policy renewal dates, unilaterally canceling an  
 10 individual's coverage under an individual or group health  
 11 insurance policy solely because of the individual's medical or  
 12 physical condition.
- 13 (18) Using a policy form or rider that would permit a cancellation  
 14 of coverage as described in subdivision (17).
- 15 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1  
 16 concerning motor vehicle insurance rates.
- 17 (20) Violating IC 27-8-21-2 concerning advertisements referring  
 18 to interest rate guarantees.
- 19 (21) Violating IC 27-8-24.3 concerning insurance and health plan  
 20 coverage for victims of abuse.
- 21 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 22 (23) Violating IC 27-1-15.6-3(b) concerning licensure of  
 23 insurance producers.
- 24 (24) Violating IC 27-1-38 concerning depository institutions.
- 25 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning  
 26 the resolution of an appealed grievance decision.
- 27 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired  
 28 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,  
 29 2007, and repealed).
- 30 (27) Violating IC 27-2-21 concerning use of credit information.
- 31 (28) Violating IC 27-4-9-3 concerning recommendations to  
 32 consumers.
- 33 (29) Engaging in dishonest or predatory insurance practices in  
 34 marketing or sales of insurance to members of the United States  
 35 Armed Forces as:
- 36 (A) described in the federal Military Personnel Financial  
 37 Services Protection Act, P.L.109-290; or
- 38 (B) defined in rules adopted under subsection (b).
- 39 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated  
 40 life insurance.
- 41 (31) Violating IC 27-2-22 concerning retained asset accounts.
- 42 **(32) Violating IC 27-8-11-4.7 or IC 27-13-34-15.2 concerning**

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**contracts for dental services.**

(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel Financial Services Protection Act (P.L.109-290), adopt rules under IC 4-22-2 to:

(1) define; and

(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States Armed Forces from;

dishonest or predatory insurance practices.

SECTION 2. IC 27-8-11-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 4.7. (a) As used in this section, "covered services" means health care services for which any reimbursement is available under an insured's policy, regardless of whether the actual reimbursement is contractually limited by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or any other limitation.**

**(b) An insurer shall not, under an agreement under section 3 of this chapter, require a dentist to accept an amount set by the insurer as payment for health care services provided to an insured unless the health care services are covered services under the insured's policy.**

**(c) An insurer shall not provide merely de minimis reimbursement or coverage in an effort to avoid the requirements of this section.**

**(d) This section does not apply to a discount medical card program provider agreement regulated under IC 27-17.**

**(e) A violation of this section is an unfair and deceptive act in the business of insurance under IC 27-4-1-4.**

SECTION 3. IC 27-13-34-15.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 15.2. (a) As used in this section, "covered services" means limited health services for which any coverage is available under an enrollee's individual contract or group contract, regardless of whether the actual coverage is contractually limited by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or any other limitation.**

**(b) A limited service health maintenance organization shall not,**

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1 under a contract described in section 15 of this chapter, require a  
2 dentist to accept an amount set by the limited service health  
3 maintenance organization as payment for limited health services  
4 provided to an enrollee unless the limited health services are  
5 covered services under the enrollee's individual contract or group  
6 contract.

7 (c) A limited service health maintenance organization shall not  
8 provide merely de minimis reimbursement or coverage in an effort  
9 to avoid the requirements of this section.

10 (d) This section does not apply to a discount medical card  
11 program provider agreement regulated under IC 27-17.

12 (e) A violation of this section is an unfair and deceptive act in  
13 the business of insurance under IC 27-4-1-4.

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