

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Senate Bill 293 be amended to read as follows:

- 1 Page 1, delete lines 1 through 15.
- 2 Delete page 2, and begin a new paragraph and insert:
- 3 "SECTION 1. IC 27-4-1-4.5 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4.5. The following are
- 5 unfair claim settlement practices:
- 6 (1) Misrepresenting pertinent facts or insurance policy
- 7 provisions relating to coverages at issue.
- 8 (2) Failing to acknowledge and act reasonably promptly upon
- 9 communications with respect to claims arising under insurance
- 10 policies.
- 11 (3) Failing to adopt and implement reasonable standards for the
- 12 prompt investigation of claims arising under insurance policies.
- 13 (4) Refusing to pay claims without conducting a reasonable
- 14 investigation based upon all available information.
- 15 (5) Failing to affirm or deny coverage of claims within a
- 16 reasonable time after proof of loss statements have been
- 17 completed.
- 18 (6) Not attempting in good faith to effectuate prompt, fair, and
- 19 equitable settlements of claims in which liability has become
- 20 reasonably clear.
- 21 (7) Compelling insureds to institute litigation to recover amounts
- 22 due under an insurance policy by offering substantially less than
- 23 the amounts ultimately recovered in actions brought by such
- 24 insureds.
- 25 (8) Attempting to settle a claim for less than the amount to which
- 26 a reasonable man would have believed he was entitled by
- 27 reference to written or printed advertising material
- 28 accompanying or made part of an application.
- 29 (9) Attempting to settle claims on the basis of an application
- 30 which was altered without notice to or knowledge or consent of
- 31 the insured.
- 32 (10) Making claims payments to insureds or beneficiaries not
- 33 accompanied by a statement setting forth the coverage under

- 1 which the payments are being made.
- 2 (11) Making known to insureds or claimants a policy of  
3 appealing from arbitration awards in favor of insureds or  
4 claimants for the purpose of compelling them to accept  
5 settlements or compromises less than the amount awarded in  
6 arbitration.
- 7 (12) Delaying the investigation or payment of claims by  
8 requiring an insured, claimant, or the physician of either to  
9 submit a preliminary claim report and then requiring the  
10 subsequent submission of formal proof of loss forms, both of  
11 which submissions contain substantially the same information.
- 12 (13) Failing to promptly settle claims, where liability has become  
13 reasonably clear, under one (1) portion of the insurance policy  
14 coverage in order to influence settlements under other portions  
15 of the insurance policy coverage.
- 16 (14) Failing to promptly provide a reasonable explanation of the  
17 basis in the insurance policy in relation to the facts or applicable  
18 law for denial of a claim or for the offer of a compromise  
19 settlement.
- 20 (15) In negotiations concerning liability insurance claims,  
21 ascribing a percentage of fault to a person seeking to recover  
22 from an insured party, in spite of an obvious absence of fault on  
23 the part of that person.
- 24 (16) The unfair claims settlement practices defined in  
25 IC 27-4-1.5.
- 26 **(17) The control, influence, or participation with the**  
27 **independent medical judgment of a physician who is**  
28 **practicing within accepted standards of care, when the**  
29 **control, influence, or participation causes the amount or**  
30 **quality of medical care received by an insured to be reduced.**
- 31 SECTION 2. IC 27-4-1-5.7 IS ADDED TO THE INDIANA CODE  
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
33 1, 1998]: **Sec. 5.7. (a) A complaint filed under section 5.6 of this**  
34 **chapter involving an alleged unfair claims settlement practice**  
35 **under section 4.5(17) of this chapter shall be forwarded to the**  
36 **medical complaint professional employed under section 15(b) of**  
37 **this chapter.**
- 38 **(b) The medical complaint professional shall, within five (5)**  
39 **business days after the complaint is filed:**
- 40 **(1) make a determination of appropriateness of the allegation**  
41 **based on information gathered from the complaining party,**  
42 **the health maintenance organization, the attending**  
43 **physician, and any additional information that the medical**  
44 **complaint professional considers necessary and appropriate;**  
45 **and**
- 46 **(2) submit the medical complaint professional's**  
47 **determination to the commissioner.**

1 **If the medical complaint professional needs additional time to**  
 2 **investigate before submitting findings to the commissioner, the**  
 3 **medical complaint professional shall advise the commissioner of**  
 4 **the need for additional time.**

5 **(c) The commissioner shall consider the medical complaint**  
 6 **professional's determination in any action taken by the**  
 7 **commissioner on a complaint filed under section 5.6 of this chapter**  
 8 **involving an alleged unfair claims settlement practice under section**  
 9 **4.5(17) of this chapter.**

10 SECTION 3. IC 27-4-1-15 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 15. (a) For the purpose  
 12 of maintaining the affirmative, active, and definite administration of the  
 13 provisions of this chapter, the commissioner, with the approval of the  
 14 governor, may appoint such additional actuaries, agents, deputies,  
 15 examiners, assistants, stenographers, reporters, and other employees in  
 16 the department as may be found necessary to carry out the provisions  
 17 of this chapter. Except as otherwise provided in this chapter, such  
 18 additional deputies, examiners, assistants, reporters, and employees so  
 19 appointed shall be chosen for their fitness, either professional or  
 20 practical, as the nature of the position may require, irrespective of their  
 21 political beliefs or affiliations. The technical or professional  
 22 qualifications of any applicant shall be determined by examination,  
 23 professional rating, or otherwise, as the commissioner with the  
 24 approval of the governor may determine. Subject to the approval of the  
 25 governor and the state budget director, the salaries of such additional  
 26 actuaries, agents, deputies, examiners, assistants, stenographers,  
 27 reporters, and other employees shall be fixed by the commissioner. Any  
 28 actuary agent, deputy, examiner, assistant, stenographer, or employee  
 29 so employed may be removed at any time by the commissioner.

30 **(b) The commissioner shall appoint or enter into a contract for**  
 31 **services with a medical complaint professional who is:**

32 **(1) a registered nurse licensed under IC 25-23; or**

33 **(2) a physician licensed under IC 25-22.5;**

34 **for all complaints filed under section 5.6 of this chapter regarding**  
 35 **alleged unfair claims settlement practices under section 4.5(17) of**  
 36 **this chapter.**

37 ~~(b)~~ **(c)** In the absence of the commissioner, he may, by written  
 38 order, designate a deputy to conduct any hearing, and, in such case,  
 39 such deputy commissioner shall possess and may exercise all powers  
 40 of the commissioner with respect to the matter in hearing.

41 ~~(c)~~ **(d)** Neither the commissioner nor any actuary, deputy,  
 42 examiner, assistant, or employee in the department shall be liable in  
 43 their individual capacity, except to the state of Indiana, for any act done  
 44 or omitted in connection with the performance of their respective duties  
 45 under the provisions of this chapter."

46 Page 3, delete lines 1 through 17.

47 Page 3, line 18, delete "2" and insert "4".

1 Page 3, line 18, delete "IC 27-8-27, as added", begin a new  
2 paragraph and insert:

3 **"(a) The commissioner of insurance shall submit two (2)**  
4 **reports to the legislative council concerning the following:**

5 **(1) The manner in which the commissioner complies with**  
6 **IC 27-4-1-15(b), as added by this act, concerning the**  
7 **retention of the services of a medical complaint professional.**

8 **(2) The number of complaints filed under IC 27-4-1-5.6**  
9 **concerning alleged unfair claims settlement practices defined**  
10 **under IC 27-4-1-4.5(17).**

11 **(3) The nature and number of all penalties assessed against**  
12 **insurers or health maintenance organizations for unfair**  
13 **claims settlement practices defined under IC 27-4-1-4.5(17).**

14 **(b) The first report required under subsection (a) must cover**  
15 **the period of July 1, 1998 through June 30, 1999 and shall be**  
16 **submitted to the legislative council not later than August 1, 1999.**

17 **(c) The second report required under subsection (a) shall cover**  
18 **the period of July 1, 1999 through June 30, 2000 and shall be**  
19 **submitted to the legislative council not later than August 1, 2000."**

20 Page 3, delete line 19.

(Reference is to SB 293 as printed January 27, 1998.)

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Senator MILLER