



Reprinted
April 11, 2003

ENGROSSED SENATE BILL No. 341

DIGEST OF SB 341 (Updated April 10, 2003 3:14 PM - DI 97)

Citations Affected: IC 27-4; IC 27-8; noncode.

Synopsis: Waiver of preexisting conditions. Provides that: (1) an individual policy of accident and sickness insurance; or (2) a group policy of accident and sickness insurance under which a certificate of coverage is issued to an individual member of a non-employer based association or discretionary group; that is issued after June 30, 2003, and before July 1, 2005, may contain a waiver of coverage for a specified condition under certain circumstances. Specifies that an offer of coverage under a policy that includes a waiver does not preclude eligibility for a comprehensive health insurance association policy. Specifies certain requirements applying to the issuance of an association policy by an out of state insurer to an Indiana resident. Requires reporting by insurers to the department of insurance and requires the department of insurance to report to the legislative council and general assembly.

Effective: July 1, 2003.

**Miller, Paul, Meeks R, Weatherwax,
Clark**

(HOUSE SPONSORS — FRY, OXLEY, RIPLEY, TORR)

January 15, 2003, read first time and referred to Committee on Health and Provider Services.

January 30, 2003, amended, reported favorably — Do Pass.

February 4, 2003, read second time, amended, ordered engrossed.

February 5, 2003, engrossed.

February 6, 2003, returned to second reading.

February 13, 2003, re-read second time, amended, ordered engrossed.

February 14, 2003, engrossed.

February 20, 2003, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

April 7, 2003, amended, reported — Do Pass.

April 10, 2003, read second time, amended, ordered engrossed.

ES 341—LS 7595/DI 97+



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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 341

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.130-2002,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 4. 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;

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- (D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or
- (E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.
- (2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.
- (3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.
- (5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.
- (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, in
 12 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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(D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

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

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

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right

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to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

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

- (A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.
- (B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.
- (C) Title insurance.
- (D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.
- (E) Insurance provided by or through motorists service clubs or associations.
- (F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:
 - (i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;
 - (ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;
 - (iii) insures against baggage loss during the flight to which the ticket relates; or
 - (iv) insures against a flight cancellation to which the ticket relates.

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

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the

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- 1 refusal, limitation, or rate differential is based on sound actuarial
 2 principles or is related to actual or reasonably anticipated
 3 experience.
- 4 (16) Committing or performing, with such frequency as to
 5 indicate a general practice, unfair claim settlement practices (as
 6 defined in section 4.5 of this chapter).
- 7 (17) Between policy renewal dates, unilaterally canceling an
 8 individual's coverage under an individual or group health
 9 insurance policy solely because of the individual's medical or
 10 physical condition.
- 11 (18) Using a policy form or rider that would permit a cancellation
 12 of coverage as described in subdivision (17).
- 13 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
 14 vehicle insurance rates.
- 15 (20) Violating IC 27-8-21-2 concerning advertisements referring
 16 to interest rate guarantees.
- 17 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 18 coverage for victims of abuse.
- 19 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 20 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 21 insurance producers.
- 22 (24) Violating IC 27-1-38 concerning depository institutions.
- 23 **(25) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or**
 24 **IC 27-8-5-19.2.**
- 25 SECTION 2. IC 27-8-5-2.5 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.5. (a) As used in this
 27 section, the term "policy of accident and sickness insurance" does not
 28 include the following:
- 29 (1) Accident only, credit, dental, vision, Medicare supplement,
 30 long term care, or disability income insurance.
- 31 (2) Coverage issued as a supplement to liability insurance.
- 32 (3) Automobile medical payment insurance.
- 33 (4) A specified disease policy issued as an individual policy.
- 34 (5) A limited benefit health insurance policy issued as an
 35 individual policy.
- 36 (6) A short term insurance plan that:
- 37 (A) may not be renewed; and
- 38 (B) has a duration of not more than six (6) months.
- 39 (7) A policy that provides a stipulated daily, weekly, or monthly
 40 payment to an insured during hospital confinement, without
 41 regard to the actual expense of the confinement.
- 42 (8) Worker's compensation or similar insurance.

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- 1 (9) A student health insurance policy.
- 2 (b) The benefits provided by an individual policy of accident and
3 sickness insurance may not be excluded, limited, or denied for more
4 than twelve (12) months after the effective date of the coverage
5 because of a preexisting condition of the individual.
- 6 (c) An individual policy of accident and sickness insurance may not
7 define a preexisting condition, a rider, or an endorsement more
8 restrictively than as:
- 9 (1) a condition that would have caused an ordinarily prudent
10 person to seek medical advice, diagnosis, care, or treatment
11 during the twelve (12) months immediately preceding the
12 effective date of enrollment in the plan;
- 13 (2) a condition for which medical advice, diagnosis, care, or
14 treatment was recommended or received during the twelve (12)
15 months immediately preceding the effective date of enrollment in
16 the plan; or
- 17 (3) a pregnancy existing on the effective date of enrollment in the
18 plan.
- 19 (d) An insurer shall reduce the period allowed for a preexisting
20 condition exclusion described in subsection (b) by the amount of time
21 the individual has continuously served under a preexisting condition
22 clause for a policy of accident and sickness insurance issued under
23 IC 27-8-15 if the individual applies for a policy under this chapter not
24 more than thirty (30) days after coverage under a policy of accident and
25 sickness insurance issued under IC 27-8-15 expires.
- 26 **(e) This subsection applies to a policy that is issued after June**
27 **30, 2003, and before July 1, 2005. Notwithstanding subsections (b)**
28 **and (c), an individual policy of accident and sickness insurance**
29 **may contain a waiver of coverage for a specified condition and**
30 **complications directly related to the specified condition if:**
- 31 **(1) the period for which the exemption would be in effect does**
32 **not exceed two (2) years; and**
- 33 **(2) all of the following conditions are met:**
- 34 **(A) The insurer provides to the applicant before issuance**
35 **of the policy a written notice explaining the waiver of**
36 **coverage for the specified condition and complications**
37 **directly related to the specified condition, including a**
38 **specific description of each condition, complication,**
39 **service, and treatment for which coverage is being waived.**
- 40 **(B) The:**
- 41 **(i) offer of coverage; and**
- 42 **(ii) policy;**

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1 include the waiver in a separate section stating in bold
 2 print that the applicant is receiving coverage with an
 3 exception for the waived condition and specifying each
 4 related condition, complication, service, and treatment for
 5 which coverage is waived.

6 (C) The:

- 7 (i) offer of coverage; and
- 8 (ii) policy;

9 do not include more than two (2) waivers per individual.

10 (D) The waiver period is concurrent with and not in
 11 addition to any applicable preexisting condition limitation
 12 or exclusionary period.

13 (E) The insurer agrees to:

- 14 (i) review the underwriting basis for the waiver upon
 15 request one (1) time per year; and
- 16 (ii) remove the waiver if the insurer determines that
 17 evidence of insurability is satisfactory.

18 (F) The insurer discloses to the applicant that the applicant
 19 may decline the offer of coverage and apply for a policy
 20 issued by the Indiana comprehensive health insurance
 21 association under IC 27-8-10.

22 (G) The waiver of coverage does not apply to coverage
 23 required under state law.

24 (H) An insurance benefit card issued by the insurer to the
 25 applicant includes a telephone number for verification of
 26 coverage waived.

27 The insurer shall require an applicant to initial the written notice
 28 provided under subdivision (2)(A) and the waiver included in the
 29 offer of coverage and in the policy under subdivision (2)(B) to
 30 acknowledge acceptance of the waiver of coverage. An offer of
 31 coverage under a policy that includes a waiver under this
 32 subsection does not preclude eligibility for an Indiana
 33 comprehensive health insurance association policy under
 34 IC 27-8-10-5.1. This subsection expires July 1, 2007.

35 (f) This subsection applies to a policy that is issued after June
 36 30, 2003, and before July 1, 2005. An insurer shall not, on the basis
 37 of a waiver contained in a policy as provided in subsection (e), deny
 38 coverage for any condition, complication, service, or treatment that
 39 is not specified as required in the:

- 40 (1) written notice under subsection (e)(2)(A); and
- 41 (2) offer of coverage and policy under subsection (e)(2)(B).

42 This subsection expires July 1, 2007.



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(g) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. An individual who is covered under a policy that includes a waiver under subsection (e) may directly appeal a denial of coverage based on the waiver by filing a request for an external grievance review under IC 27-8-29 without pursuing a grievance under IC 27-8-28. This subsection expires July 1, 2007.

(h) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. Notwithstanding subsection (e), an individual policy of accident and sickness insurance may not contain a waiver of coverage for:

- (1) a mental health condition; or**
- (2) a developmental disability.**

This subsection expires July 1, 2007.

(i) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. A waiver under this section may be applied to a policy of accident and sickness insurance only at the time the policy is issued. This subsection expires July 1, 2007.

(j) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. An insurer or insurance producer shall not use this section to circumvent the guaranteed access and availability provisions of this chapter, IC 27-8-15, or the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191). This subsection expires July 1, 2007.

(k) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. A pattern or practice of violations of subsections (e) through (j) is an unfair method of competition or an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4. This subsection expires July 1, 2007.

SECTION 3. IC 27-8-5-16.5, AS AMENDED BY P.L.96-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16.5. (a) As used in this section, "delivery state" means any state other than Indiana in which a policy is delivered or issued for delivery.

(b) Except as provided in subsection (c), (d), or (e), a certificate may not be issued to a resident of Indiana pursuant to a group policy that is delivered or issued for delivery in a state other than Indiana.

(c) A certificate may be issued to a resident of Indiana pursuant to a group policy not described in subsection (d) that is delivered or issued for delivery in a state other than Indiana if:

- (1) the delivery state has a law substantially similar to section 16

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- 1 of this chapter;
- 2 (2) the delivery state has approved the group policy; and
- 3 (3) the policy or the certificate contains provisions that are:
- 4 (A) substantially similar to the provisions required by:
- 5 (i) section 19 of this chapter;
- 6 (ii) section 21 of this chapter; and
- 7 (iii) IC 27-8-5.6; and
- 8 (B) consistent with the requirements set forth in:
- 9 (i) section 24 of this chapter;
- 10 (ii) IC 27-8-6;
- 11 (iii) IC 27-8-14;
- 12 (iv) IC 27-8-23;
- 13 (v) 760 IAC 1-38.1; and
- 14 (vi) 760 IAC 1-39.
- 15 (d) A certificate may be issued to a resident of Indiana under an
- 16 association group policy, a discretionary group policy, or a trust group
- 17 policy that is delivered or issued for delivery in a state other than
- 18 Indiana if:
- 19 (1) the delivery state has a law **that:**
- 20 (A) **prohibits association policies issued to cover the**
- 21 **members of an association unless:**
- 22 (i) **the association was organized and maintained in good**
- 23 **faith for purposes other than that of obtaining**
- 24 **insurance;**
- 25 (ii) **the association has at the outset at least one hundred**
- 26 **(100) members;**
- 27 (iii) **the association has been in active existence for at**
- 28 **least one (1) year;**
- 29 (iv) **the association has a constitution and bylaws that**
- 30 **provide that the association holds regular meetings not**
- 31 **less than annually to further purposes of the members;**
- 32 (v) **the association, except for credit unions, collects dues**
- 33 **or solicits contributions from members; and**
- 34 (vi) **the members have voting privileges and**
- 35 **representation on the association's governing board and**
- 36 **committees; and**
- 37 (B) **is otherwise** substantially similar to section 16 of this
- 38 chapter;
- 39 (2) the delivery state has approved the group policy; and
- 40 (3) the policy or the certificate contains provisions that are:
- 41 (A) substantially similar to the provisions required by:
- 42 (i) section 19 of this chapter;

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- 1 (ii) **section 19.2 of this chapter if the policy or certificate**
- 2 **contains a waiver of coverage;**
- 3 **(iii) section 21 of this chapter; and**
- 4 ~~(iii)~~ **(iv) IC 27-8-5.6; and**
- 5 **(B) consistent with the requirements set forth in:**
- 6 (i) section 15.6 of this chapter;
- 7 (ii) section 24 of this chapter;
- 8 (iii) section 26 of this chapter;
- 9 (iv) IC 27-8-6;
- 10 (v) IC 27-8-14;
- 11 (vi) IC 27-8-14.1;
- 12 (vii) IC 27-8-14.5;
- 13 (viii) IC 27-8-14.7;
- 14 (ix) IC 27-8-14.8;
- 15 (x) IC 27-8-20;
- 16 (xi) IC 27-8-23;
- 17 (xii) IC 27-8-24.3;
- 18 (xiii) IC 27-8-26;
- 19 (xiv) IC 27-8-28;
- 20 (xv) IC 27-8-29;
- 21 (xvi) 760 IAC 1-38.1; and
- 22 (xvii) 760 IAC 1-39.

23 (e) A certificate may be issued to a resident of Indiana pursuant to
 24 a group policy that is delivered or issued for delivery in a state other
 25 than Indiana if the commissioner determines that the policy pursuant
 26 to which the certificate is issued meets the requirements set forth in
 27 section 17(a) of this chapter.

28 (f) This section does not affect any other provision of Indiana law
 29 governing the terms or benefits of coverage provided to a resident of
 30 Indiana under any certificate or policy of insurance.

31 SECTION 4. IC 27-8-5-19.2 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2003]: **Sec. 19.2. (a) This section applies to an association or a
 34 discretionary group policy of accident and sickness insurance:**

- 35 **(1) under which a certificate of coverage is issued after June**
- 36 **30, 2003, and before July 1, 2005, to an individual member of**
- 37 **the association or discretionary group; and**
- 38 **(2) that is not employer based.**

39 **(b) Notwithstanding section 19 of this chapter, a policy**
 40 **described in subsection (a) may contain a waiver of coverage for a**
 41 **specified condition and complications directly related to the**
 42 **specified condition if:**

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- (1) the period for which the exemption would be in effect does not exceed two (2) years; and**
- (2) all of the following conditions are met:**
 - (A) The insurer provides to the applicant before issuance of the policy a written notice explaining the waiver of coverage for the specified condition and complications directly related to the specified condition, including a specific description of each condition, complication, service, and treatment for which coverage is being waived.**
 - (B) The:**
 - (i) offer of coverage; and**
 - (ii) certificate of coverage;****include the waiver in a separate section stating in bold print that the applicant is receiving coverage with an exception for the waived condition and specifying each related condition, complication, service, and treatment for which coverage is waived.**
 - (C) The:**
 - (i) offer of coverage; and**
 - (ii) certificate of coverage;****do not include more than two (2) waivers per individual.**
 - (D) The waiver period is concurrent with and not in addition to any applicable preexisting condition limitation or exclusionary period.**
 - (E) The insurer agrees to:**
 - (i) review the underwriting basis for the waiver upon request one (1) time per year; and**
 - (ii) remove the waiver if the insurer determines that evidence of insurability is satisfactory.**
 - (F) The insurer discloses to the applicant that the applicant may decline the offer of coverage, and any individual to whom the waiver would have applied may apply for a policy issued by the Indiana comprehensive health insurance association under IC 27-8-10.**
 - (G) The waiver of coverage does not apply to coverage required under state law.**
 - (H) An insurance benefit card issued by the insurer to the applicant includes a telephone number for verification of coverage waived.**
- (c) The insurer shall require an applicant to initial the written notice provided under subsection (b)(2)(A) and the waiver included in the offer of coverage and in the certificate of coverage under**

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subsection (b)(2)(B) to acknowledge acceptance of the waiver of coverage.

(d) An insurer shall not, on the basis of a waiver contained in a policy as provided in this section, deny coverage for any condition, complication, service, or treatment that is not specified as required in the:

- (1) written notice under subsection (b)(2)(A); and
- (2) offer of coverage and certificate of coverage under subsection (b)(2)(B).

(e) An individual who is covered under a policy that includes a waiver under this section may directly appeal a denial of coverage based on the waiver by filing a request for an external grievance review under IC 27-8-29 without pursuing a grievance under IC 27-8-28.

(f) An offer of coverage under a policy that includes a waiver under this section does not preclude eligibility for an Indiana comprehensive health insurance association policy under IC 27-8-10-5.1.

(g) Notwithstanding subsection (b), a policy described in subsection (a) may not contain a waiver of coverage for:

- (1) a mental health condition; or
- (2) a developmental disability.

(h) A waiver under this section may be applied to a certificate of coverage of accident and sickness insurance only at the time the certificate is issued.

(i) IC 27-8-5-16.5 applies to a policy described in this section.

(j) An insurer or insurance producer shall not use this section to circumvent the guaranteed access and availability provisions of this chapter, IC 27-8-15, or the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

(k) A pattern or practice of violations of subsections (e) through (j) is an unfair method of competition or an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4.

(l) This section expires July 1, 2007.

SECTION 5. IC 27-8-10-5.1, AS AMENDED BY P.L.233-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5.1. (a) Except as provided in subsections (b) and (c), a person is not eligible for an association policy if, at the effective date of coverage, the person has or is eligible for coverage under any insurance plan that equals or exceeds the minimum requirements for accident and sickness insurance policies issued in Indiana as set forth in IC 27. However, an offer of coverage described in

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1 **IC 27-8-5-2.5(e) or IC 27-8-5-19.2(b) does not affect an individual's**
 2 **eligibility for an association policy under this subsection.** Coverage
 3 under any association policy is in excess of, and may not duplicate,
 4 coverage under any other form of health insurance.

5 (b) Except as provided in IC 27-13-16-4, a person is eligible for an
 6 association policy upon a showing that:

7 (1) the person has been rejected by one (1) carrier for coverage
 8 under any insurance plan that equals or exceeds the minimum
 9 requirements for accident and sickness insurance policies issued
 10 in Indiana, as set forth in IC 27, without material underwriting
 11 restrictions;

12 (2) an insurer has refused to issue insurance except at a rate
 13 exceeding the association plan rate; or

14 (3) the person is a federally eligible individual.

15 For the purposes of this subsection, eligibility for Medicare coverage
 16 does not disqualify a person who is less than sixty-five (65) years of
 17 age from eligibility for an association policy.

18 (c) The board of directors may establish procedures that would
 19 permit:

20 (1) an association policy to be issued to persons who are covered
 21 by a group insurance arrangement when that person or a
 22 dependent's health condition is such that the group's coverage is
 23 in jeopardy of termination or material rate increases because of
 24 that person's or dependent's medical claims experience; and

25 (2) an association policy to be issued without any limitation on
 26 preexisting conditions to a person who is covered by a health
 27 insurance arrangement when that person's coverage is scheduled
 28 to terminate for any reason beyond the person's control.

29 (d) An association policy must provide that coverage of a dependent
 30 unmarried child terminates when the child becomes nineteen (19) years
 31 of age (or twenty-five (25) years of age if the child is enrolled full-time
 32 in an accredited educational institution). The policy must also provide
 33 in substance that attainment of the limiting age does not operate to
 34 terminate a dependent unmarried child's coverage while the dependent
 35 is and continues to be both:

36 (1) incapable of self-sustaining employment by reason of mental
 37 retardation or mental or physical disability; and

38 (2) chiefly dependent upon the person in whose name the contract
 39 is issued for support and maintenance.

40 However, proof of such incapacity and dependency must be furnished
 41 to the carrier within one hundred twenty (120) days of the child's
 42 attainment of the limiting age, and subsequently as may be required by



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1 the carrier, but not more frequently than annually after the two (2) year
2 period following the child's attainment of the limiting age.

3 (e) An association policy that provides coverage for a family
4 member of the person in whose name the contract is issued must, as to
5 the family member's coverage, also provide that the health insurance
6 benefits applicable for children are payable with respect to a newly
7 born child of the person in whose name the contract is issued from the
8 moment of birth. The coverage for newly born children must consist of
9 coverage of injury or illness, including the necessary care and treatment
10 of medically diagnosed congenital defects and birth abnormalities. If
11 payment of a specific premium is required to provide coverage for the
12 child, the contract may require that notification of the birth of a child
13 and payment of the required premium must be furnished to the carrier
14 within thirty-one (31) days after the date of birth in order to have the
15 coverage continued beyond the thirty-one (31) day period.

16 (f) Except as provided in subsection (g), an association policy may
17 contain provisions under which coverage is excluded during a period
18 of three (3) months following the effective date of coverage as to a
19 given covered individual for preexisting conditions, as long as medical
20 advice or treatment was recommended or received within a period of
21 three (3) months before the effective date of coverage. This subsection
22 may not be construed to prohibit preexisting condition provisions in an
23 insurance policy that are more favorable to the insured.

24 (g) If a person applies for an association policy within six (6)
25 months after termination of the person's coverage under a health
26 insurance arrangement and the person meets the eligibility
27 requirements of subsection (b), then an association policy may not
28 contain provisions under which:

29 (1) coverage as to a given individual is delayed to a date after the
30 effective date or excluded from the policy; or

31 (2) coverage as to a given condition is denied;
32 on the basis of a preexisting health condition. This subsection may not
33 be construed to prohibit preexisting condition provisions in an
34 insurance policy that are more favorable to the insured.

35 (h) For purposes of this section, coverage under a health insurance
36 arrangement includes, but is not limited to, coverage pursuant to the
37 Consolidated Omnibus Budget Reconciliation Act of 1985.

38 SECTION 6. IC 27-8-29-6, AS ADDED BY P.L.203-2001,
39 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2003]: Sec. 6. As used in this chapter, "external grievance"
41 means the independent review under this chapter of a:

42 (1) grievance filed under IC 27-8-28; or

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1 **(2) denial of coverage based on a waiver described in**
2 **IC 27-8-5-2.5 or IC 27-8-5-19.2.**

3 SECTION 7. IC 27-8-29-12, AS ADDED BY P.L.203-2001,
4 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2003]: Sec. 12. An insurer shall establish and maintain an
6 external grievance procedure for the resolution of external grievances
7 regarding:

- 8 (1) an adverse determination of appropriateness;
- 9 (2) an adverse determination of medical necessity; ~~or~~
- 10 (3) a determination that a proposed service is experimental or
- 11 investigational; **or**

12 **(4) a denial of coverage based on a waiver described in**
13 **IC 27-8-5-2.5 or IC 27-8-5-19.2;**

14 made by an insurer or an agent of an insurer regarding a service
15 proposed by the treating health care provider.

16 SECTION 8. IC 27-8-29-13, AS AMENDED BY P.L.1-2002,
17 SECTION 118, IS AMENDED TO READ AS FOLLOWS
18 [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) An external grievance
19 procedure established under section 12 of this chapter must:

- 20 (1) allow a covered individual or a covered individual's
- 21 representative to file a written request with the insurer for an
- 22 external grievance review of the insurer's:

- 23 **(A) appeal resolution under IC 27-8-28-17; or**
- 24 **(B) denial of coverage based on a waiver described in**
- 25 **IC 27-8-5-2.5 or IC 27-8-5-19.2;**

26 not more than forty-five (45) days after the covered individual is
27 notified of the resolution; and

- 28 (2) provide for:

- 29 (A) an expedited external grievance review for a grievance
- 30 related to an illness, a disease, a condition, an injury, or a
- 31 disability if the time frame for a standard review would
- 32 seriously jeopardize the covered individual's:

- 33 (i) life or health; or
- 34 (ii) ability to reach and maintain maximum function; or

- 35 (B) a standard external grievance review for a grievance not
- 36 described in clause (A).

37 A covered individual may file not more than one (1) external grievance
38 of an insurer's appeal resolution under this chapter.

39 (b) Subject to the requirements of subsection (d), when a request is
40 filed under subsection (a), the insurer shall:

- 41 (1) select a different independent review organization for each
- 42 external grievance filed under this chapter from the list of

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1 independent review organizations that are certified by the
2 department under section 19 of this chapter; and

3 (2) rotate the choice of an independent review organization
4 among all certified independent review organizations before
5 repeating a selection.

6 (c) The independent review organization chosen under subsection
7 (b) shall assign a medical review professional who is board certified in
8 the applicable specialty for resolution of an external grievance.

9 (d) The independent review organization and the medical review
10 professional conducting the external review under this chapter may not
11 have a material professional, familial, financial, or other affiliation with
12 any of the following:

13 (1) The insurer.

14 (2) Any officer, director, or management employee of the insurer.

15 (3) The health care provider or the health care provider's medical
16 group that is proposing the service.

17 (4) The facility at which the service would be provided.

18 (5) The development or manufacture of the principal drug, device,
19 procedure, or other therapy that is proposed for use by the treating
20 health care provider.

21 (6) The covered individual requesting the external grievance
22 review.

23 However, the medical review professional may have an affiliation
24 under which the medical review professional provides health care
25 services to covered individuals of the insurer and may have an
26 affiliation that is limited to staff privileges at the health facility, if the
27 affiliation is disclosed to the covered individual and the insurer before
28 commencing the review and neither the covered individual nor the
29 insurer objects.

30 (e) A covered individual ~~may be required to pay not more than~~
31 ~~twenty-five dollars (\$25) shall not pay any~~ of the costs associated with
32 the services of an independent review organization under this chapter.
33 All ~~additional~~ costs must be paid by the insurer.

34 SECTION 9. IC 27-8-29-15, AS ADDED BY P.L.203-2001,
35 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2003]: Sec. 15. (a) An independent review organization shall:

37 (1) for an expedited external grievance filed under section
38 13(a)(2)(A) of this chapter, within three (3) business days after
39 the external grievance is filed; or

40 (2) for a standard appeal filed under section 13(a)(2)(B) of this
41 chapter, within fifteen (15) business days after the appeal is filed;
42 make a determination to uphold or reverse the insurer's appeal

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1 resolution under IC 27-8-28-17 based on information gathered from the
2 covered individual or the covered individual's designee, the insurer,
3 and the treating health care provider, and any additional information
4 that the independent review organization considers necessary and
5 appropriate.

6 (b) When making the determination under this section, the
7 independent review organization shall apply:

8 (1) standards of decision making that are based on objective
9 clinical evidence; and

10 (2) the terms of the covered individual's accident and sickness
11 insurance policy.

12 (c) **In an external grievance described in section 12(4) of this**
13 **chapter, the insurer bears the burden of proving that the insurer**
14 **properly denied coverage for a condition, complication, service, or**
15 **treatment because the condition, complication, service, or**
16 **treatment is directly related to a condition for which coverage has**
17 **been waived under IC 27-8-5-2.5 or IC 27-8-5-19.2.**

18 (d) The independent review organization shall notify the insurer and
19 the covered individual of the determination made under this section:

20 (1) for an expedited external grievance filed under section
21 13(a)(2)(A) of this chapter, within twenty-four (24) hours after
22 making the determination; and

23 (2) for a standard external grievance filed under section
24 13(a)(2)(B) of this chapter, within seventy-two (72) hours after
25 making the determination.

26 SECTION 10. [EFFECTIVE JULY 1, 2003] (a) **An insurer that**
27 **issues a policy of accident and sickness insurance that contains a**
28 **waiver under IC 27-8-5-2.5(e) or IC 27-8-5-19.2, both as added by**
29 **this act, shall submit to the commissioner of the department of**
30 **insurance the following information for the reporting periods**
31 **specified under subsection (b) on a form prescribed by the**
32 **commissioner:**

33 (1) **The number of policies that the insurer issued with a**
34 **waiver.**

35 (2) **A list of specified conditions that the insurer waived.**

36 (3) **The number of waivers issued for each specified condition**
37 **listed under subdivision (2).**

38 (4) **The number of waivers issued categorized by the period of**
39 **time for which coverage of a specified condition was waived.**

40 (5) **The number of applicants who were denied insurance**
41 **coverage by the insurer because of a specified condition.**

42 (6) **The number of:**

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- 1 **(A) complaints; and**
- 2 **(B) requests for external grievance review;**
- 3 **filed in relation to a waiver.**
- 4 **(b) An insurer shall submit the information required under**
- 5 **subsection (a) as follows:**
- 6 **(1) Not later than August 1, 2004, for the reporting period**
- 7 **July 1, 2003, through June 30, 2004.**
- 8 **(2) Not later than August 1, 2005, for the reporting period**
- 9 **July 1, 2004, through June 30, 2005.**
- 10 **(3) Not later than August 1, 2006, for the reporting period**
- 11 **July 1, 2005, through June 30, 2006.**
- 12 **(4) Not later than August 1, 2007, for the reporting period**
- 13 **July 1, 2006, through June 30, 2007.**
- 14 **(c) The commissioner of the department of insurance shall**
- 15 **forward the information submitted:**
- 16 **(1) under subsection (b)(1) not later than November 1, 2004;**
- 17 **(2) under subsection (b)(2) not later than November 1, 2005;**
- 18 **(3) under subsection (b)(3) not later than November 1, 2006;**
- 19 **and**
- 20 **(4) under subsection (b)(4) not later than November 1, 2007;**
- 21 **to the legislative council.**
- 22 **(d) The commissioner of the department of insurance shall**
- 23 **compile the information submitted under subsection (b) and, not**
- 24 **later than November 1 of each year report the information to the**
- 25 **legislative council and each member of the general assembly.**
- 26 **(e) This SECTION expires June 30, 2008.**

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SENATE MOTION

Mr. President: I move that Senator Paul be added as second author of Senate Bill 341.

MILLER

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 341, 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:

Page 2, line 37, delete ", including a specific" and insert ".".

Page 2, delete lines 38 through 39.

Page 3, line 3, delete "specifying each" and insert "**complications of the waived condition.**".

Page 3, delete lines 4 through 5.

Page 3, between lines 23 and 24, begin a new line double block indented and insert:

"(H) An insurance benefit card issued by the insurer to the applicant includes a telephone number for verification of coverage waived."

Page 3, line 34, delete "condition, complication, service, or treatment" and insert "**condition or complication**".

Page 3, line 34, after "not" insert ":

(1)".

Page 3, line 36, delete "(1)" begin a new line double block indented and insert "**(A)**".

Page 3, line 37, delete "(2)" begin a new line double block indented and insert "**(B)**".

Page 3, line 37, delete "." and insert "; or

(2) determined by the insured's treating physician to be directly related to a condition for which coverage is waived under subsection (e).".

Page 4, between lines 5 and 6, begin a new paragraph and insert:

"(i) A waiver under this section may be applied to a policy of accident and sickness insurance only at the time the policy is issued."

Page 4, line 24, delete ", including a specific" and insert ".".

Page 4, delete lines 25 through 26.

Page 4, line 32, delete "specifying each" and insert "**complications of the waived condition.**".

Page 4, delete lines 33 through 34.

Page 5, between lines 11 and 12, begin a new line double block indented and insert:

"(H) An insurance benefit card issued by the insurer to the applicant includes a telephone number for verification of

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coverage waived."

Page 5, line 18, delete "condition," and insert "**condition or complication**".

Page 5, line 19, delete "complication, service, or treatment".

Page 5, line 19, after "not" insert ":

(1)".

Page 5, line 21, delete "(1)" begin a new line double block indented and insert "**(A)**".

Page 5, line 22, delete "(2)" begin a new line double block indented and insert "**(B)**".

Page 5, line 23, delete "." and insert "; or

(2) determined by the insured's treating physician to be directly related to a condition for which coverage is waived under subsection (b).".

Page 5, between lines 36 and 37, begin a new paragraph and insert:
"(h) A waiver under this section may be applied to a certificate of coverage of accident and sickness insurance only at the time the certificate is issued."

Page 9, between lines 35 and 36, begin a new paragraph and insert:
 "SECTION 7. IC 27-8-29-15, AS ADDED BY P.L.203-2001, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) An independent review organization shall:

(1) for an expedited external grievance filed under section 13(a)(2)(A) of this chapter, within three (3) business days after the external grievance is filed; or

(2) for a standard appeal filed under section 13(a)(2)(B) of this chapter, within fifteen (15) business days after the appeal is filed;

make a determination to uphold or reverse the insurer's appeal resolution under IC 27-8-28-17 based on information gathered from the covered individual or the covered individual's designee, the insurer, and the treating health care provider, and any additional information that the independent review organization considers necessary and appropriate.

(b) When making the determination under this section, the independent review organization shall apply:

(1) standards of decision making that are based on objective clinical evidence; and

(2) the terms of the covered individual's accident and sickness insurance policy.

(c) In an external grievance described in section 12(4) of this chapter, the insurer bears the burden of showing that the insurer properly denied coverage for a condition, complication, service, or

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treatment because the condition, complication, service, or treatment is directly related to a condition for which coverage has been waived under IC 27-8-5-2.5 or IC 27-8-5-19.2.

(d) The independent review organization shall notify the insurer and the covered individual of the determination made under this section:

- (1) for an expedited external grievance filed under section 13(a)(2)(A) of this chapter, within twenty-four (24) hours after making the determination; and
- (2) for a standard external grievance filed under section 13(a)(2)(B) of this chapter, within seventy-two (72) hours after making the determination."

Page 9, line 38, delete ",".

Page 9, line 39, delete "delivered, amended, or renewed".

Page 10, between lines 19 and 20, begin a new paragraph and insert:

"(c) The commissioner of the department of insurance shall forward the information submitted:

- (1) under subsection (b)(1) not later than November 1, 2004;**
- and**

(2) under subsection (b)(2) not later than November 1, 2005; to the legislative council."

Page 10, line 20, delete "(c)" and insert "(d)".

Page 10, line 22, delete "senate" and insert "legislative council".

Page 10, delete lines 23 through 24.

Page 10, line 25, delete "(d)" and insert "(e)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 341 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Mr. President: I move that Senator Meeks R be added as coauthor of Engrossed Senate Bill 341.

MILLER

SENATE MOTION

Mr. President: I move that Senate Bill 341 be amended to read as follows:

Page 11, line 1, after "issued" insert "**or delivered**".

(Reference is to SB 341 as printed January 31, 2003.)

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SENATE MOTION

Mr. President: I move that Senator Weatherwax be added as coauthor of Engrossed Senate Bill 341.

MILLER

SENATE MOTION

Mr. President: I move that Engrossed Senate Bill 341, which is eligible for third reading, be returned to second reading for purposes of amendment.

MILLER

SENATE MOTION

Mr. President: I move that Senate Bill 341 be amended to read as follows:

Page 2, line 37, delete "." and insert ", **including a specific description of each condition, complication, service, and treatment for which coverage is being waived.**".

Page 3, line 1, delete "complications of" and insert "**specifying each related condition, complication, service, and treatment for which coverage is waived.**".

Page 3, delete line 2.

Page 3, line 34, delete "condition or complication" and insert "**condition, complication, service, or treatment**".

Page 3, line 34, delete ":".

Page 3, line 35, delete "(1)".

Page 3, run in lines 34 through 35.

Page 3, line 36, delete "(A)", begin a new line block indented and insert "**(1)**".

Page 3, line 37, delete "(B)", begin a new line block indented and insert "**(2)**".

Page 3, line 37, delete ";" and insert ".".

Page 3, delete lines 38 through 41.

Page 4, line 31, delete "condition." and insert "**condition, including a specific description of each condition, complication, service, and treatment for which coverage is being waived.**".



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Page 4, line 37, delete "complications of" and insert "**specifying each related condition, complication, service, and treatment for which coverage is waived.**".

Page 4, delete line 38.

Page 5, line 25, delete "condition" and insert "**condition, complication, service, or treatment**".

Page 5, line 26, delete "or complication".

Page 5, line 26, delete ":".

Page 5, line 27, delete "(1)".

Page 5, run in lines 26 through 27.

Page 5, line 28, delete "(A)", begin a new line block indented and insert "**(1)**".

Page 5, line 29, delete "(B)", begin a new line block indented and insert "**(2)**".

Page 5, line 30, delete "; or" and insert ".".

Page 5, delete lines 31 through 33.

(Reference is to SB 341 as reprinted February 5, 2003.)

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SENATE MOTION

Mr. President: I move that Senator Clark be added as coauthor of Engrossed Senate Bill 341.

MILLER

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred Senate Bill 341, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.130-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making,

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publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

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

(7) Making or permitting any of the following:

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

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made

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

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

- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

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

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or

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purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

- (A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.
- (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.
- (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.
- (D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.
- (9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

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

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

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

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

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

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

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the

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event of the death or disability of the insured.

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

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

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

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

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

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

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

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

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- (22) Violating IC 27-8-26 concerning genetic screening or testing.
 (23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.
 (24) Violating IC 27-1-38 concerning depository institutions.
(25) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2."

Page 2, line 27, after "(e)" insert **"This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005."**

Page 2, line 29, delete "that arise" and insert **"directly related to"**.

Page 2, line 30, delete "from".

Page 2, line 32, delete "five (5)" and insert **"two (2)"**.

Page 2, line 37, delete "arising from" and insert **"directly related to"**.

Page 3, line 34, after "IC 27-8-10-5.1." insert **"This subsection expires July 1, 2007."**

Page 3, line 35, after "(f)" insert **"This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005."**

Page 3, line 35, delete "may" and insert **"shall"**.

Page 3, between lines 40 and 41, begin a new line blocked left and insert:

"This subsection expires July 1, 2007."

Page 3, line 41, after "(g)" insert **"This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005."**

Page 4, line 3, after "IC 27-8-28." insert **"This subsection expires July 1, 2007."**

Page 4, line 4, after "(h)" insert **"This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005."**

Page 4, between lines 8 and 9, begin a new line blocked left and insert:

"This subsection expires July 1, 2007."

Page 4, line 9, after "(i)" insert **"This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005."**

Page 4, line 11, after "issued." insert **"This subsection expires July 1, 2007."**

(j) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. An insurer or insurance producer shall not use this section to circumvent the guaranteed access and availability provisions of this chapter, IC 27-8-15, or the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191). This subsection expires July 1, 2007.

(k) This subsection applies to a policy that is issued after June 30, 2003, and before July 1, 2005. A pattern or practice of

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violations of subsections (e) through (j) is an unfair method of competition or an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4. This subsection expires July 1, 2007.

SECTION 3. IC 27-8-5-16.5, AS AMENDED BY P.L.96-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 16.5. (a) As used in this section, "delivery state" means any state other than Indiana in which a policy is delivered or issued for delivery.

(b) Except as provided in subsection (c), (d), or (e), a certificate may not be issued to a resident of Indiana pursuant to a group policy that is delivered or issued for delivery in a state other than Indiana.

(c) A certificate may be issued to a resident of Indiana pursuant to a group policy not described in subsection (d) that is delivered or issued for delivery in a state other than Indiana if:

- (1) the delivery state has a law substantially similar to section 16 of this chapter;
- (2) the delivery state has approved the group policy; and
- (3) the policy or the certificate contains provisions that are:
 - (A) substantially similar to the provisions required by:
 - (i) section 19 of this chapter;
 - (ii) section 21 of this chapter; and
 - (iii) IC 27-8-5.6; and
 - (B) consistent with the requirements set forth in:
 - (i) section 24 of this chapter;
 - (ii) IC 27-8-6;
 - (iii) IC 27-8-14;
 - (iv) IC 27-8-23;
 - (v) 760 IAC 1-38.1; and
 - (vi) 760 IAC 1-39.

(d) A certificate may be issued to a resident of Indiana under an association group policy, a discretionary group policy, or a trust group policy that is delivered or issued for delivery in a state other than Indiana if:

- (1) the delivery state has a law **that:**
 - (A) **prohibits association policies issued to cover the members of an association unless:**
 - (i) **the association was organized and maintained in good faith for purposes other than that of obtaining insurance;**
 - (ii) **the association has at the outset at least one hundred (100) members;**



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- (iii) the association has been in active existence for at least one (1) year;**
- (iv) the association has a constitution and bylaws that provide that the association holds regular meetings not less than annually to further purposes of the members;**
- (v) the association, except for credit unions, collects dues or solicits contributions from members; and**
- (vi) the members have voting privileges and representation on the association's governing board and committees; and**

(B) is otherwise substantially similar to section 16 of this chapter;

- (2) the delivery state has approved the group policy; and
- (3) the policy or the certificate contains provisions that are:
 - (A) substantially similar to the provisions required by:
 - (i) section 19 of this chapter;
 - (ii) section 19.2 of this chapter if the policy or certificate contains a waiver of coverage;**
 - (iii) section 21 of this chapter; and**
 - ~~(iii)~~ **(iv) IC 27-8-5.6; and**
 - (B) consistent with the requirements set forth in:
 - (i) section 15.6 of this chapter;
 - (ii) section 24 of this chapter;
 - (iii) section 26 of this chapter;
 - (iv) IC 27-8-6;
 - (v) IC 27-8-14;
 - (vi) IC 27-8-14.1;
 - (vii) IC 27-8-14.5;
 - (viii) IC 27-8-14.7;
 - (ix) IC 27-8-14.8;
 - (x) IC 27-8-20;
 - (xi) IC 27-8-23;
 - (xii) IC 27-8-24.3;
 - (xiii) IC 27-8-26;
 - (xiv) IC 27-8-28;
 - (xv) IC 27-8-29;
 - (xvi) 760 IAC 1-38.1; and
 - (xvii) 760 IAC 1-39.

(e) A certificate may be issued to a resident of Indiana pursuant to a group policy that is delivered or issued for delivery in a state other than Indiana if the commissioner determines that the policy pursuant to which the certificate is issued meets the requirements set forth in



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section 17(a) of this chapter.

(f) This section does not affect any other provision of Indiana law governing the terms or benefits of coverage provided to a resident of Indiana under any certificate or policy of insurance."

Page 4, line 16, after "issued" insert "**after June 30, 2003, and before July 1, 2005,**".

Page 4, line 22, delete "that arise from" and insert "**directly related to**".

Page 4, line 25, delete "five (5)" and insert "**two (2)**".

Page 4, line 30, delete "arising from" and insert "**directly related to**".

Page 5, line 26, delete "may" and insert "**shall**".

Page 6, between lines 6 and 7, begin a new paragraph and insert:

"(i) IC 27-8-5-16.5 applies to a policy described in this section.

(j) An insurer or insurance producer shall not use this section to circumvent the guaranteed access and availability provisions of this chapter, IC 27-8-15, or the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

(k) A pattern or practice of violations of subsections (e) through (j) is an unfair method of competition or an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4.

(l) This section expires July 1, 2007."

Page 10, line 2, strike "may be required to pay not more than".

Page 10, line 3, strike "twenty-five dollars (\$25)" and insert "**shall not pay any**".

Page 10, line 4, strike "additional".

Page 10, line 27, delete "showing" and insert "**proving**".

Page 10, delete lines 40 through 42.

Page 11, delete line 1.

Page 11, between lines 17 and 18, begin a new line block indented and insert:

"(6) The number of:

(A) complaints; and

(B) requests for external grievance review;

filed in relation to a waiver."

Page 11, line 20, delete "September" and insert "**August**".

Page 11, line 22, delete "September" and insert "**August**".

Page 11, between lines 23 and 24, begin a new line block indented and insert:

"(3) Not later than August 1, 2006, for the reporting period July 1, 2005, through June 30, 2006.

(4) Not later than August 1, 2007, for the reporting period

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July 1, 2006, through June 30, 2007."

Page 11, delete line 27.

Page 11, between lines 28 and 29, begin a new line block indented and insert:

**"(3) under subsection (b)(3) not later than November 1, 2006;
and**

(4) under subsection (b)(4) not later than November 1, 2007;"

Page 11, line 32, delete ", 2005," and insert "**of each year**".

Page 11, line 33, after "council" insert "**and each member of the general assembly**".

Page 11, line 34, delete "2006." and insert "**2008.**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 341 as reprinted February 14, 2003.)

FRY, Chair

Committee Vote: yeas 7, nays 6.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 341 be amended to read as follows:

Page 10, line 13, delete "treatment of".

Page 14, line 22, delete "treatment of".

(Reference is to ESB 341 as printed April 8, 2003.)

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