



February 21, 2003

SENATE BILL No. 122

DIGEST OF SB 122 (Updated February 19, 2003 1:24 PM - DI 104)

Citations Affected: IC 27-4; IC 27-8; IC 27-13; noncode.

Synopsis: Grievance appeals. Provides that an accident and sickness insurer or a health maintenance organization that does not resolve an appeal within the statutory time frame commits an unfair and deceptive act or practice in the business of insurance. Requires quarterly reporting regarding resolution of grievance appeals.

Effective: July 1, 2003.

Gard

January 7, 2003, read first time and referred to Committee on Health and Provider Services.
February 20, 2003, amended, reported favorably — Do Pass.

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SB 122—LS 6646/DI 97+



February 21, 2003

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.

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SENATE BILL No. 122

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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- 1 (D) Paying by an insurer or agent thereof duly licensed as such
 2 under the laws of this state of money, commission, or
 3 brokerage, or giving or allowing by an insurer or such licensed
 4 agent thereof anything of value, for or on account of the
 5 solicitation or negotiation of policies or other contracts of any
 6 kind or kinds, to a broker, agent, or solicitor duly licensed
 7 under the laws of this state, but such broker, agent, or solicitor
 8 receiving such consideration shall not pay, give, or allow
 9 credit for such consideration as received in whole or in part,
 10 directly or indirectly, to the insured by way of rebate.
- 11 (9) Requiring, as a condition precedent to loaning money upon the
 12 security of a mortgage upon real property, that the owner of the
 13 property to whom the money is to be loaned negotiate any policy
 14 of insurance covering such real property through a particular
 15 insurance agent or broker or brokers. However, this subdivision
 16 shall not prevent the exercise by any lender of its or his right to
 17 approve or disapprove of the insurance company selected by the
 18 borrower to underwrite the insurance.
- 19 (10) Entering into any contract, combination in the form of a trust
 20 or otherwise, or conspiracy in restraint of commerce in the
 21 business of insurance.
- 22 (11) Monopolizing or attempting to monopolize or combining or
 23 conspiring with any other person or persons to monopolize any
 24 part of commerce in the business of insurance. However,
 25 participation as a member, director, or officer in the activities of
 26 any nonprofit organization of agents or other workers in the
 27 insurance business shall not be interpreted, in itself, to constitute
 28 a combination in restraint of trade or as combining to create a
 29 monopoly as provided in this subdivision and subdivision (10).
 30 The enumeration in this chapter of specific unfair methods of
 31 competition and unfair or deceptive acts and practices in the
 32 business of insurance is not exclusive or restrictive or intended to
 33 limit the powers of the commissioner or department or of any
 34 court of review under section 8 of this chapter.
- 35 (12) Requiring as a condition precedent to the sale of real or
 36 personal property under any contract of sale, conditional sales
 37 contract, or other similar instrument or upon the security of a
 38 chattel mortgage, that the buyer of such property negotiate any
 39 policy of insurance covering such property through a particular
 40 insurance company, agent, or broker or brokers. However, this
 41 subdivision shall not prevent the exercise by any seller of such
 42 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 27-8-28-17(c) or IC 27-13-10-8(c) concerning**
 24 **the resolution of an appealed grievance decision.**
- 25 SECTION 2. IC 27-8-28-17, AS AMENDED BY P.L.1-2002,
 26 SECTION 116, IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) An insurer shall establish
 28 written policies and procedures for the timely resolution of appeals of
 29 grievance decisions. The procedures for registering and responding to
 30 oral and written appeals of grievance decisions must include the
 31 following:
- 32 (1) Written or oral acknowledgment of the appeal not more than
 33 five (5) business days after the appeal is filed.
- 34 (2) Documentation of the substance of the appeal and the actions
 35 taken.
- 36 (3) Investigation of the substance of the appeal, including any
 37 aspects of clinical care involved.
- 38 (4) Notification to the covered individual:
- 39 (A) of the disposition of an appeal; and
- 40 (B) that the covered individual may have the right to further
 41 remedies allowed by law.
- 42 (5) Standards for timeliness in:

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- 1 (A) responding to an appeal; and
- 2 (B) providing notice to covered individuals of:
 - 3 (i) the disposition of an appeal; and
 - 4 (ii) the right to initiate an external grievance review under
 - 5 IC 27-8-29;
 - 6 that accommodate the clinical urgency of the situation.
- 7 (b) In the case of an appeal of a grievance decision described in
- 8 section 6(1) or 6(2) of this chapter, an insurer shall appoint a panel of
- 9 one (1) or more qualified individuals to resolve an appeal. The panel
- 10 must include one (1) or more individuals who:
 - 11 (1) have knowledge of the medical condition, procedure, or
 - 12 treatment at issue;
 - 13 (2) are licensed in the same profession and have a similar
 - 14 specialty as the provider who proposed or delivered the health
 - 15 care procedure, treatment, or service;
 - 16 (3) are not involved in the matter giving rise to the appeal or in
 - 17 the initial investigation of the grievance; and
 - 18 (4) do not have a direct business relationship with the covered
 - 19 individual or the health care provider who previously
 - 20 recommended the health care procedure, treatment, or service
 - 21 giving rise to the grievance.
- 22 (c) An appeal of a grievance decision must be resolved:
 - 23 (1) as expeditiously as possible, reflecting the clinical urgency of
 - 24 the situation; and
 - 25 (2) not later than forty-five (45) days after the appeal is filed.
- 26 **An insurer that violates this subsection commits an unfair and**
- 27 **deceptive act or practice in the business of insurance under**
- 28 **IC 27-4-1-4.**
- 29 **(d) If an insurer violates subsection (c), the insurer shall file a**
- 30 **report with the department during the quarter in which the**
- 31 **violation occurred concerning the insurer's compliance with**
- 32 **subsection (c). The report must include the following:**
 - 33 **(1) The number of appealed grievance decisions that were not**
 - 34 **resolved as required under subsection (c).**
 - 35 **(2) The reason each appeal described in subdivision (1) was**
 - 36 **not resolved.**
- 37 ~~(d)~~ **(e)** An insurer shall allow a covered individual the opportunity
- 38 to:
 - 39 (1) appear in person before; or
 - 40 (2) if unable to appear in person, otherwise appropriately
 - 41 communicate with;
 - 42 the panel appointed under subsection (b).

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1 (e) (f) An insurer shall notify a covered individual in writing of the
2 resolution of an appeal of a grievance decision within five (5) business
3 days after completing the investigation. The appeal resolution notice
4 must include the following:

- 5 (1) A statement of the decision reached by the insurer.
- 6 (2) A statement of the reasons, policies, and procedures that are
7 the basis of the decision.
- 8 (3) Notice of the covered individual's right to further remedies
9 allowed by law, including the right to external grievance review
10 by an independent review organization under IC 27-8-29.
- 11 (4) The department, address, and telephone number through
12 which a covered individual may contact a qualified representative
13 to obtain more information about the decision or the right to an
14 external grievance review.

15 SECTION 3. IC 27-13-10-8, AS AMENDED BY P.L.133-1999,
16 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2003]: Sec. 8. (a) A health maintenance organization shall
18 establish written policies and procedures for the timely resolution of
19 appeals of grievance decisions. The procedures for registering and
20 responding to oral and written appeals of grievance decisions must
21 include the following:

- 22 (1) Acknowledgment of the appeal, orally or in writing, within
23 three (3) business days after receipt of the appeal being filed.
- 24 (2) Documentation of the substance of the appeal and the actions
25 taken.
- 26 (3) Investigation of the substance of the appeal, including any
27 aspects of clinical care involved.
- 28 (4) Notification to enrollees or subscribers of the disposition of
29 the appeal and that the enrollee or subscriber may have the right
30 to further remedies allowed by law.
- 31 (5) Standards for timeliness in responding to appeals and
32 providing notice to enrollees or subscribers of the disposition of
33 the appeal and the right to initiate an external appeals process that
34 accommodate the clinical urgency of the situation.

35 (b) The health maintenance organization shall appoint a panel of
36 qualified individuals to resolve an appeal. An individual may not be
37 appointed to the panel who has been involved in the matter giving rise
38 to the complaint or in the initial investigation of the complaint. Except
39 for grievances that have previously been appealed under IC 27-8-17, in
40 the case of an appeal from the proposal, refusal, or delivery of a health
41 care procedure, treatment, or service, the health maintenance
42 organization shall appoint one (1) or more individuals to the panel to

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1 resolve the appeal. The panel must include one (1) or more individuals
2 who:

3 (1) have knowledge in the medical condition, procedure, or
4 treatment at issue;

5 (2) are in the same licensed profession as the provider who
6 proposed, refused, or delivered the health care procedure,
7 treatment, or service;

8 (3) are not involved in the matter giving rise to the appeal or the
9 previous grievance process; and

10 (4) do not have a direct business relationship with the enrollee or
11 the health care provider who previously recommended the health
12 care procedure, treatment, or service giving rise to the grievance.

13 (c) An appeal of a grievance decision must be resolved as
14 expeditiously as possible and with regard to the clinical urgency of the
15 appeal. However, an appeal must be resolved not later than forty-five
16 (45) days after the appeal is filed. **A health maintenance organization
17 that violates this subsection commits an unfair and deceptive act or
18 practice in the business of insurance under IC 27-4-1-4.**

19 (d) **A health maintenance organization shall file a quarterly
20 report with the department concerning the insurer's compliance
21 with subsection (c). The report must include the following:**

22 **(1) The number of appealed grievance decisions that were not
23 resolved as required under subsection (c).**

24 **(2) The reason each appeal described in subdivision (1) was
25 not resolved.**

26 (e) A health maintenance organization shall allow enrollees and
27 subscribers the opportunity to appear in person at the panel or to
28 communicate with the panel through appropriate other means if the
29 enrollee or subscriber is unable to appear in person.

30 (f) A health maintenance organization shall notify the enrollee
31 or subscriber in writing of the resolution of the appeal of a grievance
32 within five (5) business days after completing the investigation. The
33 grievance resolution notice must contain the following:

34 (1) The decision reached by the health maintenance organization.

35 (2) The reasons, policies, or procedures that are the basis of the
36 decision.

37 (3) Notice of the enrollee's or subscriber's right to further
38 remedies allowed by law, including the right to review by an
39 independent review organization under IC 27-13-10.1.

40 (4) The department, address, and telephone number through
41 which an enrollee may contact a qualified representative to obtain
42 more information about the decision or the right to an appeal.

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1 SECTION 4. [EFFECTIVE JULY 1, 2003] (a) **IC 27-8-28-17 and**
2 **IC 27-13-10-8, both as amended by this act, apply to an appeal of**
3 **a grievance that is filed after June 30, 2003.**
4 **(b) This SECTION expires June 30, 2006.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 122, 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 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

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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 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

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premium, policy fees, assessments, or rates charged or made 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

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giving, or selling, or purchasing or offering to give, sell, or 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

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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 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

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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 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

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coverage for victims of abuse.

(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 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision."

Page 2, line 26, delete "," and insert ".".

Page 2, delete lines 27 through 33, begin a new line blocked left and insert:

"An insurer that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.

(d) If an insurer violates subsection (c), the insurer shall file a report with the department during the quarter in which the violation occurred concerning the insurer's compliance with subsection (c). The report must include the following:

(1) The number of appealed grievance decisions that were not resolved as required under subsection (c).

(2) The reason each appeal described in subdivision (1) was not resolved."

Page 2, line 34, strike "(d)" and insert "(e)".

Page 2, line 39, strike "(e)" and insert "(f)".

Page 4, line 12, delete ", unless the enrollee or subscriber" and insert **"A health maintenance organization that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4."**

Page 4, delete lines 13 through 18.

Page 4, line 19, after "(d)" insert **"A health maintenance organization shall file a quarterly report with the department concerning the insurer's compliance with subsection (c). The report must include the following:**

(1) The number of appealed grievance decisions that were not resolved as required under subsection (c).

(2) The reason each appeal described in subdivision (1) was not resolved.

(e)".

Page 4, line 23, strike "(e)" and insert "(f)".

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 122 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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