Reprinted
February 22, 2008

ENGROSSED
HOUSE BILL No. 1379

DIGEST OF HB 1379 (Updated February 21, 2008 3:05 pm - DI 97)

Citations Affected: IC 27-1; IC 27-4; IC 27-8.

Synopsis: Stranger originated life insurance. Defines "stranger originated life insurance". Prohibits: (1) an insurer from alleging stranger originated life insurance as a basis for denial of payment of life insurance policy proceeds; and (2) the promotion of the purchase of a life insurance policy in connection with stranger originated life insurance.

Effective: July 1, 2008.

Ripley, Fry
(SENATE SPONSORS — CHARBONNEAU, PAUL, SIMPSON, SMITH S)

January 16, 2008, read first time and referred to Committee on Insurance.
January 24, 2008, reported — Do Pass.
January 28, 2008, read second time, amended, ordered engrossed.
January 29, 2008, engrossed.
January 30, 2008, read third time, passed. Yeas 75, nays 18.

SENATE ACTION

February 5, 2008, read first time and referred to Committee on Insurance and Financial Institutions.
February 18, 2008, amended, reported favorably — Do Pass.
February 21, 2008, read second time, amended, ordered engrossed.

C o p y

Reprinted
February 22, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

C o p y

ENGROSSED
HOUSE BILL No. 1379

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-1-12-44 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 44. (a) This section applies to a life insurance policy that is issued after June 30, 2008.**

(b) Notwithstanding any other law, an insurer shall not, after a life insurance policy has been in force for two (2) years after the life insurance policy's date of issue, allege that the life insurance policy was issued in connection with stranger originated life insurance (as defined in IC 27-8-19.8-7.8) as a basis to deny payment of the proceeds of the life insurance policy.

SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.131-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. (a) 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 the policyholder's 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 the person's 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

C o p y

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 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;

C o p y

(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 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.

C o p y

(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 insurance producer 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 insurance producer 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, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, 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 producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's 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 insurance producers 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

C o p y

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, insurance producer, 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 the 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 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

C o p y

(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, IC 27-1-22-26, or IC 27-1-22-26.1 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.

(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.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to consumers.

(29) Engaging in dishonest or predatory insurance practices in

C o p y

marketing or sales of insurance to members of the United States Armed Forces as:

(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or

(B) defined in rules adopted under subsection (b).

(30) Violating IC 27-8-19.8-20.1 concerning stranger originated life insurance.

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

(1) define; and

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

dishonest or predatory insurance practices.

SECTION 3. IC 27-8-19.8-7.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7.8. (a) As used in this chapter, "stranger originated life insurance" means a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time the life insurance policy is originated, has no insurable interest in the insured.**

(b) The term includes the following:

(1) An arrangement under which, at the time of life insurance policy inception:

(A) a life insurance policy is purchased with resources or guarantees from or through a person that is not legally permitted to initiate the life insurance policy; and

(B) a written or verbal arrangement or agreement is made to transfer the ownership of the life insurance policy or policy benefits to a third party.

(2) A trust that is:

(A) created to give an appearance of the existence of an insurable interest; and

(B) used to initiate a life insurance policy for an investor.

SECTION 4. IC 27-8-19.8-20.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 20.1. (a) A person shall not issue, solicit, market, or otherwise promote the purchase of a life insurance policy in connection with stranger originated life**

C o p y

insurance.

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

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1379, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

FRY, Chair

Committee Vote: yeas 6, nays 4.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1379 be amended to read as follows:

Page 7, line 38, delete "IC 27-18" and insert "**IC 27-8-19.8**".

Page 8, delete lines 7 through 42, begin a new paragraph and insert:

"SECTION 2. IC 27-8-19.8-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. As used in this chapter, "business of viatical settlements" means any of the following activities related to a viatical settlement contract:**

(1) Offering to enter into a viatical settlement contract.

(2) Solicitation.

(3) Negotiation.

(4) Procurance.

(5) Effectuation.

(6) Monitoring.

(7) Tracking.

SECTION 3. IC 27-8-19.8-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 2.2. As used in this chapter, "financing entity" means an underwriter, placement agent, lender, purchaser of securities, viatical settlement purchaser, credit enhancer, or another entity that has a:**

(1) direct ownership interest in a viaticated policy;

(2) principal function related to a viatical settlement contract of providing funds to:

(A) effect the viatical settlement contract; or

(B) purchase a viaticated policy; and

(3) written agreement with at least one (1) viatical settlement provider to finance the acquisition of viatical settlement

C o p y

contracts.

The term does not include a nonaccredited investor or viatical settlement purchaser.

SECTION 4. IC 27-8-19.8-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 2.3. As used in this chapter, "financing transaction" means a transaction in which a viatical settlement provider obtains financing from a financing entity, including secured or unsecured financing, a securitization transaction, or a securities offering that is registered or exempt from registration under state and federal securities law.**

SECTION 5. IC 27-8-19.8-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 2.5. As used in this chapter, "fraudulent viatical settlement act" includes the following:**

(1) Knowingly or with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, engaging in or permitting one's employees or agents to engage in the following:

(A) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, or another person, any false material information, or concealing material information, as part of, in support of, or concerning a fact material to at least one (1) of the following:

(i) An application for the issuance of a viatical settlement contract or life insurance policy.

(ii) The underwriting of a viatical settlement contract or life insurance policy.

(iii) A claim for payment or benefit under a viatical settlement contract or life insurance policy.

(iv) Premiums paid on a life insurance policy.

(v) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or life insurance policy.

(vi) The reinstatement or conversion of a life insurance policy.

(vii) The solicitation, offer, effectuation, or sale of a viatical settlement contract or life insurance policy.

(viii) The issuance of written evidence of a viatical

C o p y

settlement contract or life insurance policy.

(ix) An application for, the existence of, or payments related to a loan that is secured directly or indirectly by an interest in a life insurance policy.

(B) Employing a device, scheme, or artifice to defraud in the business of viatical settlements.

(C) Failing to disclose to an insurer that requests the disclosure that a prospective insured has undergone a life expectancy evaluation by a person other than the insurer or an authorized representative of the insurer in connection with the issuance of a life insurance policy.

(D) In the solicitation, application, or issuance of a life insurance policy, employing a device, scheme, or artifice in violation of insurable interest law.

(2) In the furtherance of a fraud or to prevent the detection of a fraud, knowingly or intentionally doing or permitting one's employees or agents to do any of the following:

(A) Removing, concealing, altering, destroying, or sequestering from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements.

(B) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person.

(C) Transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements.

(C) Filing with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner.

(D) Engaging in embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, owner, or another person engaged in the business of viatical settlements or insurance.

(E) Entering into, brokering or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by knowingly:

(i) presenting false information concerning a fact material to the life insurance policy; or

(ii) concealing, for the purpose of misleading another

C o p y

person, information concerning a fact material to the life insurance policy;

with the intent to defraud the life insurance policy's issuer.

(F) Misrepresenting a life insurance policy's owner's residency to be another jurisdiction for the purpose of evading or avoiding regulation under this chapter.

(3) Knowingly or intentionally engaging in any practice or plan that involves stranger originated life insurance.

(4) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit an act or omission described in this section.

SECTION 6. IC 27-8-19.8-3, AS AMENDED BY P.L.223-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. As used in this chapter, "insured" refers to an individual whose life is the subject of insurance under a life insurance policy. ~~or contract~~.

SECTION 7. IC 27-8-19.8-3.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 3.3. As used in this chapter, "licensee" refers to a viatical settlement provider or a viatical settlement broker that is licensed under this chapter.**

SECTION 8. IC 27-8-19.8-3.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 3.4. As used in this chapter, "life insurance policy" refers to an individual or group policy, certificate, or contract of life insurance.**

SECTION 9. IC 27-8-19.8-3.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 3.6. As used in this chapter, "owner" means a person that:**

(1) owns an individual life insurance policy; or

(2) is the certificate holder under a group life insurance policy.

SECTION 10. IC 27-8-19.8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) As used in this chapter, "viatical settlement provider" means a person, other than a viator, that:

(1) enters into a viatical settlement contract with a viator; or

(2) obtains financing for the purchase, acquisition, transfer, or other assignment of one (1) or more viatical settlement contracts, viaticated policies, or interests therein, or otherwise sells, assigns, transfers, pledges, hypothecates, or disposes of one (1) or more

C o p y

viatical settlement contracts, viaticated policies, or interests therein.

(b) The term does not include any of the following:

(1) A bank, savings bank, savings association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.

(2) The issuer of a life insurance policy that makes a policy loan, permits surrender of the policy, or pays other policy benefits, including accelerated benefits, in accordance with the terms of the **life insurance** policy.

SECTION 11. IC 27-8-19.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. **(a)** As used in this chapter, "viatical settlement contract" means ~~an~~ **a written** agreement ~~for~~ **that:**

(1) is entered into between a viatical settlement provider and an owner; and

(2) establishes the terms under which the ~~purchase,~~ s~~ale,~~ ~~assignment,~~ ~~transfer,~~ ~~devise,~~ ~~or~~ ~~bequest~~ ~~of~~ **owner:**

(A) receives payment of compensation that is:

(i) less than the expected death benefit of the owner's life insurance policy; and

(ii) more than the cash surrender value or accelerated death benefit of the owner's life insurance policy at the time the application for the written agreement is made; and

(B) sells, assigns, transfers, devises, or bequeaths the death benefit or a portion of the death benefit or ownership of ~~a~~ **the** life insurance policy ~~or contract~~ **in exchange** for ~~consideration that is less than the expected death benefit of the life insurance policy.~~ ~~or~~ ~~contract.~~ **the compensation described in clause (A).**

(b) The term includes the following:

(1) A written agreement for a loan or other lending transaction that is secured primarily by a life insurance policy.

(2) A premium finance loan made for a life insurance policy on or before the date of issuance of the life insurance policy in a situation in which:

(A) the premium finance loan proceeds are not used solely to pay:

(i) premiums for the life insurance policy; or

(ii) costs or expenses incurred by the lender or borrower

C o p y

in connection with the premium finance loan;

(B) the owner receives on the date of the premium finance loan a guarantee of the future viatical settlement value of the life insurance policy; or

(C) the owner agrees on the date of the premium finance loan to sell the life insurance policy or any part of the life insurance policy's death benefit on any date after the date of issuance of the life insurance policy.

(3) A transfer, for compensation or value, of ownership or beneficial interest in a trust or other entity that:

(A) owns a life insurance policy; and

(B) was formed or availed of for the principal purpose of acquiring at least one (1) life insurance policy.

(c) The term does not include the following:

(1) A **policy** loan by an insurer under the terms of:

(A) a life insurance policy ~~including a loan secured by the cash value of a~~ **or rider; or**

(B) accelerated death benefit provisions contained in a life insurance policy **or rider.**

(2) ~~An agreement with~~ **A premium finance loan or another loan made by** a bank ~~savings bank, savings and loan association, credit union,~~ or other licensed ~~lending~~ **financial** institution ~~that takes an assignment of a life insurance policy as collateral for a loan.~~ **if:**

(A) a default on the loan; or

(B) a transfer of the life insurance policy in connection with a default on the loan;

does not occur in connection with an agreement or understanding with another person for the purpose of evading regulation under this chapter.

~~(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.~~

~~(4) Agreements between an insurer and a reinsurer.~~

~~(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.~~

(3) A collateral assignment of a life insurance policy by the owner.

(4) A loan that:

(A) is made by a lender;

(B) does not violate Indiana law related to insurance

C o p y

premium finance loans; and

(C) is not described in subsection (a) or (b).

(5) An agreement in which all parties to the agreement:

(A) are closely related to the insured by blood or law;

(B) have a lawful substantial economic interest in the continued life, health, and bodily safety of the insured; or

(C) are trusts established primarily for the benefit of the trusts.

(6) A designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by:

(A) the employer; or

(B) a trust established by the employer;

of life insurance under which the employee is an insured.

(7) A bona fide business succession planning arrangement:

(A) between:

(i) at least two (2) shareholders in a corporation; or

(ii) a corporation and at least one (1) of the corporation's shareholders or at least one (1) trust established by the corporation's shareholders;

(B) between:

(i) at least two (2) partners in a partnership; or

(ii) a partnership and at least one (1) of the partnership's partners or at least one (1) trust established by the partnership's partners; or

(C) between:

(i) at least two (2) members in a limited liability company; or

(ii) a limited liability company and at least one (1) of the limited liability company's members or at least one (1) trust established by the limited liability company's members.

(8) An agreement entered into by:

(A) a service recipient, or a trust established by a service recipient; and

(B) a service provider, or a trust established by a service provider, who performs significant services for the service recipient's trade or business.

(9) Another contract, transaction, or arrangement exempted from the definition of "viatical settlement contract" by the commissioner based on a determination that the contract, transaction, or arrangement is not intended to be regulated

C o p y

under this chapter.

SECTION 12. IC 27-8-19.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 6.3. As used in this chapter, "viatical settlement purchaser" means a person that provides consideration for:**

(1) a beneficial interest in a trust that is vested with; or

(2) the assignment, transfer, or sale of;

an ownership or other interest in a viaticated policy.

SECTION 13. IC 27-8-19.8-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6.5. As used in this chapter, "viaticated policy" means a life insurance policy ~~or certificate~~ that has been acquired by a viatical settlement provider under a viatical settlement contract.

SECTION 14. IC 27-8-19.8-7.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7.4. As used in this chapter, "premium finance loan" means a loan that is:**

(1) made primarily for the purpose of making premium payments on a life insurance policy; and

(2) secured by an interest in the life insurance policy.

SECTION 15. IC 27-8-19.8-7.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7.6. As used in this chapter, "related provider trust" means a trust that:**

(1) is established by a viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in viaticated policies in connection with a financing transaction; and

(2) is evidenced by a written agreement between the trust and the viatical settlement provider described in subdivision (1) under which:

(A) the viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and

(B) the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if the records and files were maintained directly by the viatical settlement provider.

SECTION 16. IC 27-8-19.8-7.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7.7. As used in this chapter,**

C o p y

"special purpose entity" means a corporation, partnership, trust, limited liability company, or another legal entity formed solely to provide direct or indirect access to institutional capital markets:

(1) for a financing entity or viatical settlement provider; or

(2) in connection with a transaction in which the securities in the corporation, partnership, trust, limited liability company, or other entity:

(A) are acquired by a viator or by qualified institutional buyers (as defined under the federal Securities Act of 1933, as amended (17 CFR 144)); or

(B) pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

SECTION 17. IC 27-8-19.8-7.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1 2008]: **Sec. 7.8. (a) As used in this chapter, "stranger originated life insurance" means a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time the life insurance policy is originated, has no insurable interest in the insured.**

(b) The term includes the following:

(1) An arrangement under which, at the time of life insurance policy inception:

(A) a life insurance policy is purchased with resources or guarantees from or through a person that is not legally permitted to initiate the life insurance policy; and

(B) a written or verbal arrangement or agreement is made to transfer the ownership of the life insurance policy or policy benefits to a third party.

(2) A trust that is:

(A) created to give an appearance of the existence of an insurable interest; and

(B) used to initiate a life insurance policy for an investor.

(c) The term does not include an arrangement described in section 6(c) of this chapter.

SECTION 18. IC 27-8-19.8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. As used in this chapter, "viator" refers to the owner of a life insurance policy ~~or a certificate holder under a group policy~~ that insures the life of an insured who enters or seeks to enter into a viatical settlement contract.

SECTION 19. IC 27-8-19.8-9.2, AS ADDED BY P.L.223-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9.2. An insurance producer that:

C o p y

(1) is licensed under IC 27-1-15.6; and

(2) sells a life insurance policy ~~or contract~~ that, less than two (2) years after the insurance producer sells the **life insurance** policy, ~~or contract,~~ is the subject of a viatical settlement contract;

shall not accept a commission or other remuneration in connection with the viatical settlement contract.

SECTION 20. IC 27-8-19.8-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) A viatical settlement provider shall, **not later than March 1 of each year,** file with the department an annual report containing information **concerning the immediately preceding calendar year as** prescribed in rules adopted by the department under IC 4-22-2.

~~(b) The rules adopted by the department under subsection (a) shall set the date by which annual reports must be submitted.~~

(b) This subsection applies to viatical settlement contracts involving a life insurance policy issued less than five (5) years before the viatical settlement contract is entered into. An annual report filed under subsection (a) must include at least the following:

(1) The total number of viatical settlement contracts entered into by the viatical settlement provider.

(2) The aggregate face amount of policies that were the subject of viatical settlement contracts.

(3) The aggregate amount of proceeds of viatical settlement contracts.

(4) Aggregate information described in subdivisions (1) through (3) for each policy issue year of life insurance policies that were the subject of viatical settlement contracts.

(5) The names of the:

(A) insurers that issued life insurance policies that were the subject of viatical settlement contracts; and

(B) viatical settlement brokers that represented the viators in the viatical settlement contracts.

(c) The information required under subsection (b) is limited only to transactions in which the insured is a resident of Indiana.

(d) Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, and health information of a viator or insured are confidential.

(e) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurer, insurance producer, information bureau, rating agency or company, or any

C o p y

other person with actual knowledge of an insured's identity shall not disclose the identity of the insured or information from which there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to another person unless:

(1) the disclosure is necessary to effect a viatical settlement between the viator and a viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure;

(2) the disclosure is necessary to effectuate the sale of a viatical settlement contract or an interest in a viatical settlement contract as an investment, the sale is conducted in accordance with state and federal securities law, and the viator and insured have provided prior written consent to the disclosure;

(3) the information is provided in response to an investigation or examination by the commissioner or another governmental officer or agency;

(4) the disclosure is required under a term of or condition to the transfer of a life insurance policy from one (1) viatical settlement provider to another viatical settlement provider and the receiving viatical settlement provider complies with the confidentiality requirements of this section;

(5) the disclosure is necessary to allow the viatical settlement provider, viatical settlement broker, or an authorized representative of a viatical settlement provider or viatical settlement broker that:

(A) does not have a financial interest in the viatical settlement contract other than as a viatical settlement provider, viatical settlement broker, financing entity, related provider trust, or special purpose entity; and

(B) is required by the viatical settlement provider or viatical settlement broker to agree in writing to adhere to the privacy requirements of this chapter;

to make contacts for the purpose of determining health status; or

(6) the disclosure is required for the purchase of stop loss coverage or financial guaranty insurance.

~~(c)~~ **(f)** A viatical settlement provider shall maintain records of each viatical settlement at least five (5) years after the death of the insured.

SECTION 21. IC 27-8-19.8-20.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

C o p y

[EFFECTIVE JULY 1, 2008]: **Sec. 20.1. (a) A person shall not issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the purpose of or with an emphasis on making the life insurance policy the subject of a viatical settlement contract.**

(b) A person shall not commit a fraudulent viatical settlement act.

(c) A violation of this chapter is an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.

SECTION 22. IC 27-8-19.8-21, AS AMENDED BY P.L.223-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. (a) A viatical settlement contract must establish the terms under which the viatical settlement provider will pay value, in return for the viator's assignment, bequest, devise, sale, or transfer of the death benefit, certificate, or ownership of the **life** insurance policy to the viatical settlement provider.

(b) A viatical settlement contract must provide for the unconditional rescission of the contract by the viator for the longer of the following:

(1) the period ending not more than fifteen (15) days after the receipt of the viatical settlement proceeds by the viator; or

(2) the period ending not more than thirty (30) days after execution of the contract.

(c) A viatical settlement contract is rescinded if the insured dies during the rescission period, subject to repayment to the viatical settlement provider of all proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider.

SECTION 23. IC 27-8-19.8-23, AS AMENDED BY P.L.223-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 23. (a) A viatical settlement provider or viatical settlement broker shall, not later than the date of application, provide to a viator a brochure approved by the commissioner and describing the viatical settlement process. If a brochure describes only a viatical settlement contract in which the insured does not have a catastrophic or life threatening illness or condition, the brochure may use the term "life settlement" in place of the term "viatical settlement".

(b) A viatical settlement provider or viatical settlement broker shall, in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, disclose the following information to the viator not later than the date of application:

(1) Possible alternatives to viatical settlement contracts, including accelerated benefits or policy loans offered by the issuer of the life insurance policy.

C o p y

(2) Federal and state tax consequences that may result from entering into a viatical settlement contract, and that the viator should seek assistance from a professional tax advisor.

(3) Possible:

(A) adverse effect on eligibility for; or

(B) interruption of assistance provided by;

medical or public assistance programs as a consequence of entering into a viatical settlement contract, and that the viator should seek advice from the appropriate government agencies.

(4) The viator's right to rescind a viatical settlement contract as provided in section 21 of this chapter.

(5) The amount of any fees paid by a viatical settlement provider to a viatical settlement broker.

(6) A statement that proceeds of the viatical settlement could be subject to claims of creditors.

(7) A statement that:

(A) entering into a viatical settlement contract may cause other rights or benefits under the **life insurance** policy, including conversion rights, waiver of premium benefits, family riders, or coverage of a life other than the insured, to be forfeited by the viator; and

(B) the viator should seek advice from a financial advisor.

(8) The procedure for contacts with the insured.

(9) That the proceeds of the viatical settlement will be transferred to the viator as provided in section 24.2 of this chapter.

(10) A statement containing the following language:

"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.".

(11) That the insured may be contacted by the viatical settlement provider or viatical settlement broker to determine the health status of the insured in accordance with section 24.9 of this chapter.

(c) The viatical settlement provider shall disclose the following

C o p y

information to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement provider and the viator, before a viatical settlement contract is signed:

(1) Any affiliation between the viatical settlement provider and the insurer that issued the life insurance policy ~~or certificate~~ that is the subject of the viatical settlement contract.

(2) The name, address, and telephone number of the viatical settlement provider.

(3) If the life insurance policy ~~or certificate~~ that is the subject of the viatical settlement contract was issued as a joint policy or includes family riders or any coverage of an individual other than the insured:

(A) the possible loss of coverage of the other individuals under the **life insurance** policy; ~~or certificate;~~ and

(B) that the viator should consult with the viator's insurance producer or the insurer that issued the **life insurance** policy ~~or certificate~~ for advice concerning the proposed viatical settlement contract.

(4) The:

(A) dollar amount of the current death benefit payable to the viatical settlement provider; and

(B) if known, the:

(i) availability of any additional guaranteed insurance benefits;

(ii) dollar amount of any accidental death and dismemberment benefits; and

(iii) viatical settlement provider's interest in the benefits described in items (i) and (ii);

under the **life insurance** policy. ~~or certificate.~~

(5) The:

(A) name, business address, and telephone number of the trustee or escrow agent described in section 24.2 of this chapter; and

(B) right of the viator or insured to inspect or receive copies of the relevant escrow or trust agreements or documents.

(d) A viatical settlement broker shall disclose to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement broker and the viator before a viatical settlement contract is signed, the amount and method of calculation of the viatical settlement broker's compensation.

(e) If a viatical settlement provider transfers ownership or changes

C o p y

the beneficiary of a viaticated policy, the viatical settlement provider shall, not more than twenty (20) days after the transfer or change occurs, inform the insured of the transfer or change.

SECTION 24. IC 27-8-19.8-24.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24.2. (a) Immediately upon a viatical settlement provider's receipt of a signed viatical settlement contract, the viatical settlement provider shall pay the proceeds of the viatical settlement to a trust or escrow account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. The account shall be managed by a trustee or escrow agent independent of the parties to the contract.

(b) Within two (2) business days after the viatical settlement provider's receipt of the insurer's or group administrator's acknowledgment that ownership of the **life insurance** policy or interest in the certificate has been transferred and the beneficiary has been designated according to the viatical settlement contract, the trustee or escrow agent shall transfer the proceeds to the viator.".

Delete pages 9 through 58.

(Reference is to HB 1379 as printed January 25, 2008.)

RIPLEY

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1379, 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 7, line 38, delete "IC 27-8-19.8 concerning viatical settlements." and insert "**IC 27-8-19.8-20.1 concerning stranger originated life insurance.**".

Page 8, delete lines 7 through 42.

Delete pages 9 through 15.

Page 16, delete line 1.

Page 16, delete lines 22 through 42.

Delete page 17.

Page 18, delete lines 1 through 29.

Page 18, line 34, delete "for the purpose of or with an emphasis on

C o p y

making" and insert "**in connection with stranger originated life insurance.**".

Page 18, delete lines 35 through 38.

Page 18, line 39, delete "(c)" and insert "**(b)**".

Page 18, line 39, delete "chapter" and insert "**section**".

Page 18, delete lines 41 through 42.

Delete pages 19 through 22.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1379 as reprinted January 29, 2008.)

PAUL, Chairperson

Committee Vote: Yeas 6, Nays 4.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1379 be amended to read as follows:

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

"SECTION 1. IC 27-1-12-44 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 44. (a) This section applies to a life insurance policy that is issued after June 30, 2008.**

(b) Notwithstanding any other law, an insurer shall not, after a life insurance policy has been in force for two (2) years after the life insurance policy's date of issue, allege that the life insurance policy was issued in connection with stranger originated life insurance (as defined in IC 27-8-19.8-7.8) as a basis to deny payment of the proceeds of the life insurance policy.".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1379 as printed February 19, 2008.)

STEELE

C o p y