



April 1, 2011

**ENGROSSED
HOUSE BILL No. 1273**

DIGEST OF HB 1273 (Updated March 30, 2011 11:05 am - DI 104)

Citations Affected: IC 4-6; IC 16-37; IC 24-4.7; IC 24-5; IC 24-9; IC 25-1; IC 25-22.5; IC 27-4; IC 27-7; IC 27-8; IC 27-13.

Synopsis: Consumer protection matters. Defines health care provider for purposes of the statute authorizing the attorney general to take certain actions with respect to abandoned health records and other records containing personal information. Specifies that a professional who violates the vital statistics statute is to be disciplined under the professional's license instead of imposing a Class B misdemeanor and that the state department of health may not sanction providers for certain violations under the statute until January 1, 2012. Specifies that the statute governing the quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone applies to a residential telephone subscriber who, for the service received: (1) has a place of primary use in Indiana; or (2) is issued an Indiana
(Continued next page)

Effective: Upon passage; July 1, 2011.

Koch, Foley, Speedy, Pryor

(SENATE SPONSORS — ZAKAS, LANANE, YOUNG R MICHAEL, YODER, ROGERS, WYSS, KRUSE, HUME, BECKER, TOMES, MRVAN, GROOMS, BRODEN, CHARBONNEAU, STEELE, ALTING, SKINNER)

January 12, 2011, read first time and referred to Committee on Judiciary.
January 20, 2011, amended, reported — Do Pass.
January 24, 2011, read second time, amended, ordered engrossed.
January 25, 2011, engrossed.
January 31, 2011, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 17, 2011, read first time and referred to Committee on Commerce and Economic Development.
March 8, 2011, amended, reported favorably — Do Pass.
March 22, 2011, pursuant to Senate Rule 68(b); reassigned to Committee on Health and Provider Services.
March 31, 2011, amended, reported favorably — Do Pass.

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telephone number or an Indiana identification number; in order to include within the protections afforded by the statute subscribers of interconnected VOIP service, subscribers of mobile telecommunications services, and users of a prepaid wireless calling service. Requires the attorney general's consumer protection division (division) to notify Indiana residents of the right of any of those subscribers or users to place a telephone number on the listing. Provides that for purposes of the same statute, a "telephone sales call" includes, in addition to calls made through automated dialing or recorded message devices, transmission of the following: (1) Text or graphic messages using short message service (SMS). (2) Images, photographs, or multimedia messages through multimedia messaging service (MMS). Authorizes the medical licensing board of Indiana (board) to investigate and assess civil penalties for specified violations by licensed physicians. Requires the division to forward complaints for specified violations to the board unless certain circumstances are met. Establishes the physician compliance fund consisting of penalties assessed and collected by the board for violations determined by the board through investigations. Specifies reporting requirements of penalties and prohibits the board from reporting specified administrative penalties. Amends the statute concerning deceptive consumer sales to: (1) provide that a violation of the federal Fair Debt Collection Practices Act (FDCPA) is a deceptive act that is actionable by the attorney general under the statute (but that is not subject to an action by an individual or to a class action); and (2) include cross references to certain consumer protection statutes, the violation of which constitutes a deceptive act subject to the penalties and remedies set forth in the statute. Limits the civil penalty that the attorney general may recover for a violation of the FDCPA to \$1,000 per consumer. Specifies that for purposes of the statute governing home loan practices, a "deceptive act" includes a knowing or intentional misrepresentation made regarding real estate transactions, as well as mortgage transactions. Provides that the statute requiring the department of insurance (department) to establish and maintain an electronic system for the collection and storage of certain information about persons participating in or assisting with certain residential mortgage transactions also applies in the case of residential real estate transactions that: (1) do not involve a mortgage transaction; and (2) are closed by a closing agent after December 31, 2011. Requires certain additional information about residential mortgage transactions and residential real estate transactions to be collected and stored in the system.

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April 1, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED HOUSE BILL No. 1273

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

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

- 1 SECTION 1. IC 4-6-14-2, AS ADDED BY P.L.84-2010, SECTION
- 2 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 3 2011]: Sec. 2. As used in this chapter, "health care provider" means:
- 4 (1) a person listed in IC 16-39-7-1(a)(1) through
- 5 IC 16-39-7-1(a)(11); or
- 6 (2) a person licensed, certified, registered, or regulated by a
- 7 board listed in IC 25-1-9-1.
- 8 SECTION 2. IC 16-37-1-13 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Except as
- 10 provided in subsection (c) or (d) or as otherwise provided, a person
- 11 who recklessly violates or fails to comply with this chapter commits a
- 12 Class B misdemeanor.
- 13 (b) Each day a violation continues constitutes a separate offense.
- 14 (c) A person who:
- 15 (1) is licensed under IC 25 in a profession listed in section

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3.1(c) of this chapter; and

(2) recklessly violates or fails to comply with this chapter;
is subject only to sanctions under IC 25-1-9-4(a)(3).

(d) The state department may not begin sanctioning a person for failing to submit a document in electronic format as required in section 3.1 of this chapter until January 1, 2012.

SECTION 3. IC 24-4.7-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) "Consumer"** means a residential telephone subscriber who: ~~is an actual or a~~ prospective:

(1) for the telephone service received:

(A) has a place of primary use in Indiana; or

(B) is issued an Indiana telephone number or an Indiana identification number; and

(2) is an actual or a prospective:

~~(1)~~ **(A) purchaser, lessee, or recipient of consumer goods or services; or**

~~(2)~~ **(B) donor to a charitable organization.**

(b) The term includes a user of a prepaid wireless calling service (as defined in IC 6-2.5-1-22.4) who:

(1) is issued an Indiana telephone number or an Indiana identification number for the service; or

(2) purchases prepaid wireless calling service in a retail transaction that is sourced to Indiana (as determined under IC 6-2.5-12-16).

SECTION 4. IC 24-4.7-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. "Doing business in Indiana" means:

(1) making; or

(2) causing others to make;

telephone sales calls to consumers located in Indiana whether the telephone sales calls are made from a location in Indiana or outside Indiana.

SECTION 5. IC 24-4.7-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. "Listing" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3 that lists the ~~names~~ **telephone numbers** of ~~persons~~ **consumers** who do not wish to receive telephone sales calls.

SECTION 6. IC 24-4.7-2-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. "Place of primary use", with respect to a telephone subscriber, means the street address**

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1 representative of where the subscriber's use of the telephone
2 service primarily occurs, which must be:

- 3 (1) the residential street address of the subscriber or, in the
- 4 case of a subscriber of interconnected VOIP service, the
- 5 subscriber's registered location (as defined in 47 CFR 9.3);
- 6 and
- 7 (2) in the case of mobile telecommunications services (as
- 8 defined in IC 6-8.1-15-7), within the licensed service area of
- 9 the home service provider, as set forth in IC 6-8.1-15-8.

10 SECTION 7. IC 24-4.7-2-8 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. "Telephone
12 number" means a residential telephone number **that:**

- 13 (1) is assigned to a subscriber who has a place of primary use
- 14 in Indiana; or
- 15 (2) otherwise represents an Indiana telephone number or is
- 16 associated with an Indiana identification number.

17 SECTION 8. IC 24-4.7-2-9 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) "Telephone
19 sales call" means a telephone call made to a consumer for any of the
20 following purposes:

- 21 (1) Solicitation of a sale of consumer goods or services.
- 22 (2) Solicitation of a charitable contribution.
- 23 (3) Obtaining information that will or may be used for the direct
- 24 solicitation of a sale of consumer goods or services or an
- 25 extension of credit for such purposes.

26 (b) The term includes **any of the following:**

- 27 (1) A call made by use of **an** automated dialing ~~or~~ **device.**
- 28 (2) **A call made by use of a** recorded message ~~devices.~~ **device.**
- 29 (3) **Transmission of:**
- 30 (A) **a text message; or**
- 31 (B) **a graphic message;**
- 32 **using short message service (SMS).**
- 33 (4) **Transmission of:**
- 34 (A) **an image;**
- 35 (B) **a photograph; or**
- 36 (C) **a multimedia message;**
- 37 **using multimedia messaging service (MMS).**

38 SECTION 9. IC 24-4.7-3-4 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The division
40 shall notify Indiana residents of the rights and duties created by this
41 article, **including the right of any of the following consumers to**
42 **place a telephone number on the listing established and maintained**

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under section 1 of this chapter:

- (1) Subscribers of interconnected VOIP service.**
- (2) Subscribers of mobile telecommunications service (as defined in IC 6-8.1-15-7).**
- (3) Users of a prepaid wireless calling service, as described in IC 24-4.7-2-2(b).**

SECTION 10. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007, SECTION 165, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

- (A) A transfer of structured settlement payment rights under IC 34-50-2.
- (B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.
- (C) Collecting or attempting to collect a debt owed or due, or asserted to be owed or due, to another person.**

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

- (3) "Supplier" means the following:
- (A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.
 - (B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.
 - (C) A debt collector (as defined in 15 U.S.C. 1692a(6)).**

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- 1 (4) "Subject of a consumer transaction" means the personal
- 2 property, real property, services, or intangibles offered or
- 3 furnished in a consumer transaction.
- 4 (5) "Cure" as applied to a deceptive act, means either:
- 5 (A) to offer in writing to adjust or modify the consumer
- 6 transaction to which the act relates to conform to the
- 7 reasonable expectations of the consumer generated by such
- 8 deceptive act and to perform such offer if accepted by the
- 9 consumer; or
- 10 (B) to offer in writing to rescind such consumer transaction
- 11 and to perform such offer if accepted by the consumer.
- 12 The term includes an offer in writing of one (1) or more items of
- 13 value, including monetary compensation, that the supplier
- 14 delivers to a consumer or a representative of the consumer if
- 15 accepted by the consumer.
- 16 (6) "Offer to cure" as applied to a deceptive act is a cure that:
- 17 (A) is reasonably calculated to remedy a loss claimed by the
- 18 consumer; and
- 19 (B) includes a minimum additional amount that is the greater
- 20 of:
- 21 (i) ten percent (10%) of the value of the remedy under
- 22 clause (A), but not more than four thousand dollars
- 23 (\$4,000); or
- 24 (ii) five hundred dollars (\$500);
- 25 as compensation for attorney's fees, expenses, and other costs
- 26 that a consumer may incur in relation to the deceptive act.
- 27 (7) "Uncured deceptive act" means a deceptive act:
- 28 (A) with respect to which a consumer who has been damaged
- 29 by such act has given notice to the supplier under section 5(a)
- 30 of this chapter; and
- 31 (B) either:
- 32 (i) no offer to cure has been made to such consumer within
- 33 thirty (30) days after such notice; or
- 34 (ii) the act has not been cured as to such consumer within a
- 35 reasonable time after the consumer's acceptance of the offer
- 36 to cure.
- 37 (8) "Incurable deceptive act" means a deceptive act done by a
- 38 supplier as part of a scheme, artifice, or device with intent to
- 39 defraud or mislead. The term includes a failure of a transferee of
- 40 structured settlement payment rights to timely provide a true and
- 41 complete disclosure statement to a payee as provided under
- 42 IC 34-50-2 in connection with a direct or indirect transfer of

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structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

- (A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or
- (B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

- (A) paper into an electronic signal and to transmit that signal over a regular telephone line; or
- (B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

- (A) property;
- (B) goods; or
- (C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5).

(b) As used in section 3(a)(15) and 3(a)(16) of this chapter:

- (1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.
- (2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes

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1 listings of more than one (1) telephone company.
 2 (3) "Local telephone number" refers to a telephone number that
 3 has the three (3) number prefix used by the provider of telephone
 4 service for telephones physically located within the area covered
 5 by the local telephone directory in which the number is listed. The
 6 term does not include long distance numbers or 800-, 888-, or
 7 900- exchange numbers listed in a local telephone directory.
 8 SECTION 11. IC 24-5-0.5-3, AS AMENDED BY P.L.1-2009,
 9 SECTION 137, IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The following acts, and the
 11 following representations as to the subject matter of a consumer
 12 transaction, made orally, in writing, or by electronic communication,
 13 by a supplier, are deceptive acts:
 14 (1) That such subject of a consumer transaction has sponsorship,
 15 approval, performance, characteristics, accessories, uses, or
 16 benefits it does not have which the supplier knows or should
 17 reasonably know it does not have.
 18 (2) That such subject of a consumer transaction is of a particular
 19 standard, quality, grade, style, or model, if it is not and if the
 20 supplier knows or should reasonably know that it is not.
 21 (3) That such subject of a consumer transaction is new or unused,
 22 if it is not and if the supplier knows or should reasonably know
 23 that it is not.
 24 (4) That such subject of a consumer transaction will be supplied
 25 to the public in greater quantity than the supplier intends or
 26 reasonably expects.
 27 (5) That replacement or repair constituting the subject of a
 28 consumer transaction is needed, if it is not and if the supplier
 29 knows or should reasonably know that it is not.
 30 (6) That a specific price advantage exists as to such subject of a
 31 consumer transaction, if it does not and if the supplier knows or
 32 should reasonably know that it does not.
 33 (7) That the supplier has a sponsorship, approval, or affiliation in
 34 such consumer transaction the supplier does not have, and which
 35 the supplier knows or should reasonably know that the supplier
 36 does not have.
 37 (8) That such consumer transaction involves or does not involve
 38 a warranty, a disclaimer of warranties, or other rights, remedies,
 39 or obligations, if the representation is false and if the supplier
 40 knows or should reasonably know that the representation is false.
 41 (9) That the consumer will receive a rebate, discount, or other
 42 benefit as an inducement for entering into a sale or lease in return

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for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

- (A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;
- (B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);
- (C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and
- (D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

- (A) the customer has been notified that the work has been completed; and
- (B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

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- 1 (15) The act of misrepresenting the geographic location of the
- 2 supplier by listing a fictitious business name or an assumed
- 3 business name (as described in IC 23-15-1) in a local telephone
- 4 directory if:
 - 5 (A) the name misrepresents the supplier's geographic location;
 - 6 (B) the listing fails to identify the locality and state of the
 - 7 supplier's business;
 - 8 (C) calls to the local telephone number are routinely forwarded
 - 9 or otherwise transferred to a supplier's business location that
 - 10 is outside the calling area covered by the local telephone
 - 11 directory; and
 - 12 (D) the supplier's business location is located in a county that
 - 13 is not contiguous to a county in the calling area covered by the
 - 14 local telephone directory.
- 15 (16) The act of listing a fictitious business name or assumed
- 16 business name (as described in IC 23-15-1) in a directory
- 17 assistance database if:
 - 18 (A) the name misrepresents the supplier's geographic location;
 - 19 (B) calls to the local telephone number are routinely forwarded
 - 20 or otherwise transferred to a supplier's business location that
 - 21 is outside the local calling area; and
 - 22 (C) the supplier's business location is located in a county that
 - 23 is not contiguous to a county in the local calling area.
- 24 (17) The violation by a supplier of IC 24-3-4 concerning
- 25 cigarettes for import or export.
- 26 (18) The act of a supplier in knowingly selling or reselling a
- 27 product to a consumer if the product has been recalled, whether
- 28 by the order of a court or a regulatory body, or voluntarily by the
- 29 manufacturer, distributor, or retailer, unless the product has been
- 30 repaired or modified to correct the defect that was the subject of
- 31 the recall.
- 32 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 33 rules or regulations issued under 47 U.S.C. 227.
- 34 **(20) The violation by a supplier of the federal Fair Debt**
- 35 **Collection Practices Act (15 U.S.C. 1692 et seq.), including any**
- 36 **rules or regulations issued under the federal Fair Debt**
- 37 **Collection Practices Act (15 U.S.C. 1692 et seq.).**
- 38 **(21) A violation of IC 24-5-7 (concerning health spa services),**
- 39 **as set forth in IC 24-5-7-17.**
- 40 **(22) A violation of IC 24-5-8 (concerning business opportunity**
- 41 **transactions), as set forth in IC 24-5-8-20.**
- 42 **(23) A violation of IC 24-5-10 (concerning home consumer**

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- 1 **transactions), as set forth in IC 24-5-10-18.**
- 2 **(24) A violation of IC 24-5-11 (concerning home improvement**
- 3 **contracts), as set forth in IC 24-5-11-14.**
- 4 **(25) A violation of IC 24-5-12 (concerning telephone**
- 5 **solicitations), as set forth in IC 24-5-12-23.**
- 6 **(26) A violation of IC 24-5-13.5 (concerning buyback motor**
- 7 **vehicles), as set forth in IC 24-5-13.5-14.**
- 8 **(27) A violation of IC 24-5-14 (concerning automatic**
- 9 **dialing-announcing devices), as set forth in IC 24-5-14-13.**
- 10 **(28) A violation of IC 24-5-15 (concerning credit services**
- 11 **organizations), as set forth in IC 24-5-15-11.**
- 12 **(29) A violation of IC 24-5-16 (concerning unlawful motor**
- 13 **vehicle subleasing), as set forth in IC 24-5-16-18.**
- 14 **(30) A violation of IC 24-5-17 (concerning environmental**
- 15 **marketing claims), as set forth in IC 24-5-17-14.**
- 16 **(31) A violation of IC 24-5-19 (concerning deceptive**
- 17 **commercial solicitation), as set forth in IC 24-5-19-11.**
- 18 **(32) A violation of IC 24-5-21 (concerning prescription drug**
- 19 **discount cards), as set forth in IC 24-5-21-7.**
- 20 **(33) A violation of IC 24-5-23.5-7 (concerning real estate**
- 21 **appraisals), as set forth in IC 24-5-23.5-9.**
- 22 **(34) A violation of IC 24-5-26 (concerning identity theft), as**
- 23 **set forth in IC 24-5-26-3.**
- 24 **(35) A violation of IC 24-5.5 (concerning mortgage rescue**
- 25 **fraud), as set forth in IC 24-5.5-6-1.**
- 26 **(36) A violation of IC 24-8 (concerning promotional gifts and**
- 27 **contests), as set forth in IC 24-8-6-3.**
- 28 (b) Any representations on or within a product or its packaging or
- 29 in advertising or promotional materials which would constitute a
- 30 deceptive act shall be the deceptive act both of the supplier who places
- 31 such representation thereon or therein, or who authored such materials,
- 32 and such other suppliers who shall state orally or in writing that such
- 33 representation is true if such other supplier shall know or have reason
- 34 to know that such representation was false.
- 35 (c) If a supplier shows by a preponderance of the evidence that an
- 36 act resulted from a bona fide error notwithstanding the maintenance of
- 37 procedures reasonably adopted to avoid the error, such act shall not be
- 38 deceptive within the meaning of this chapter.
- 39 (d) It shall be a defense to any action brought under this chapter that
- 40 the representation constituting an alleged deceptive act was one made
- 41 in good faith by the supplier without knowledge of its falsity and in
- 42 reliance upon the oral or written representations of the manufacturer,

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1 the person from whom the supplier acquired the product, any testing
2 organization, or any other person provided that the source thereof is
3 disclosed to the consumer.

4 (e) For purposes of subsection (a)(12), a supplier that provides
5 estimates before performing repair or replacement work for a customer
6 shall give the customer a written estimate itemizing as closely as
7 possible the price for labor and parts necessary for the specific job
8 before commencing the work.

9 (f) For purposes of subsection (a)(15) **and (a)(16)**, a telephone
10 company or other provider of a telephone directory or directory
11 assistance service or its officer or agent is immune from liability for
12 publishing the listing of a fictitious business name or assumed business
13 name of a supplier in its directory or directory assistance database
14 unless the telephone company or other provider of a telephone
15 directory or directory assistance service is the same person as the
16 supplier who has committed the deceptive act.

17 (g) For purposes of subsection (a)(18), it is an affirmative defense
18 to any action brought under this chapter that the product has been
19 altered by a person other than the defendant to render the product
20 completely incapable of serving its original purpose.

21 SECTION 12. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,
22 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2011]: Sec. 4. (a) A person relying upon an uncured or
24 incurable deceptive act may bring an action for the damages actually
25 suffered as a consumer as a result of the deceptive act or five hundred
26 dollars (\$500), whichever is greater. The court may increase damages
27 for a willful deceptive act in an amount that does not exceed the greater
28 of:

29 (1) three (3) times the actual damages of the consumer suffering
30 the loss; or

31 (2) one thousand dollars (\$1,000).

32 Except as provided in subsection (j), the court may award reasonable
33 attorney fees to the party that prevails in an action under this
34 subsection. This subsection does not apply to a consumer transaction
35 in real property, including a claim or action involving a construction
36 defect (as defined in IC 32-27-3-1(5)) brought against a construction
37 professional (as defined in IC 32-27-3-1(4)), except for purchases of
38 time shares and camping club memberships. **This subsection does not
39 apply with respect to a deceptive act described in section 3(a)(20)
40 of this chapter.** This subsection also does not apply to a violation of
41 IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a
42 person under this section have priority over any civil penalty imposed

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1 under this chapter.

2 (b) Any person who is entitled to bring an action under subsection
 3 (a) on the person's own behalf against a supplier for damages for a
 4 deceptive act may bring a class action against such supplier on behalf
 5 of any class of persons of which that person is a member and which has
 6 been damaged by such deceptive act, subject to and under the Indiana
 7 Rules of Trial Procedure governing class actions, except as herein
 8 expressly provided. Except as provided in subsection (j), the court may
 9 award reasonable attorney fees to the party that prevails in a class
 10 action under this subsection, provided that such fee shall be determined
 11 by the amount of time reasonably expended by the attorney and not by
 12 the amount of the judgment, although the contingency of the fee may
 13 be considered. Any money or other property recovered in a class action
 14 under this subsection which cannot, with due diligence, be restored to
 15 consumers within one (1) year after the judgment becomes final shall
 16 be returned to the party depositing the same. This subsection does not
 17 apply to a consumer transaction in real property, except for purchases
 18 of time shares and camping club memberships. **This subsection does**
 19 **not apply with respect to a deceptive act described in section**
 20 **3(a)(20) of this chapter.** Actual damages awarded to a class have
 21 priority over any civil penalty imposed under this chapter.

22 (c) The attorney general may bring an action to enjoin a deceptive
 23 act, **including a deceptive act described in section 3(a)(20) of this**
 24 **chapter, notwithstanding subsections (a) and (b).** However, the
 25 attorney general may seek to enjoin patterns of incurable deceptive acts
 26 with respect to consumer transactions in real property. In addition, the
 27 court may:

- 28 (1) issue an injunction;
 29 (2) order the supplier to make payment of the money unlawfully
 30 received from the aggrieved consumers to be held in escrow for
 31 distribution to aggrieved consumers;
 32 (3) order the supplier to pay to the state the reasonable costs of
 33 the attorney general's investigation and prosecution related to the
 34 action; and
 35 (4) provide for the appointment of a receiver.

36 (d) In an action under subsection (a), (b), or (c), the court may void
 37 or limit the application of contracts or clauses resulting from deceptive
 38 acts and order restitution to be paid to aggrieved consumers.

39 (e) In any action under subsection (a) or (b), upon the filing of the
 40 complaint or on the appearance of any defendant, claimant, or any
 41 other party, or at any later time, the trial court, the supreme court, or the
 42 court of appeals may require the plaintiff, defendant, claimant, or any

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1 other party or parties to give security, or additional security, in such
2 sum as the court shall direct to pay all costs, expenses, and
3 disbursements that shall be awarded against that party or which that
4 party may be directed to pay by any interlocutory order by the final
5 judgment or on appeal.

6 (f) Any person who violates the terms of an injunction issued under
7 subsection (c) shall forfeit and pay to the state a civil penalty of not
8 more than fifteen thousand dollars (\$15,000) per violation. For the
9 purposes of this section, the court issuing an injunction shall retain
10 jurisdiction, the cause shall be continued, and the attorney general
11 acting in the name of the state may petition for recovery of civil
12 penalties. Whenever the court determines that an injunction issued
13 under subsection (c) has been violated, the court shall award
14 reasonable costs to the state.

15 (g) If a court finds any person has knowingly violated section 3 or
16 10 of this chapter, other than section 3(a)(19) or 3(a)(20) of this
17 chapter, the attorney general, in an action pursuant to subsection (c),
18 may recover from the person on behalf of the state a civil penalty of a
19 fine not exceeding five thousand dollars (\$5,000) per violation.

20 (h) If a court finds that a person has violated section 3(a)(19) of this
21 chapter, the attorney general, in an action under subsection (c), may
22 recover from the person on behalf of the state a civil penalty as follows:

- 23 (1) For a knowing or intentional violation, one thousand five
24 hundred dollars (\$1,500).
- 25 (2) For a violation other than a knowing or intentional violation,
26 five hundred dollars (\$500).

27 A civil penalty recovered under this subsection shall be deposited in
28 the consumer protection division telephone solicitation fund
29 established by IC 24-4.7-3-6 to be used for the administration and
30 enforcement of section 3(a)(19) of this chapter.

31 (i) An elderly person relying upon an uncured or incurable
32 deceptive act, including an act related to hypnotism, may bring an
33 action to recover treble damages, if appropriate.

- 34 (j) An offer to cure is:
 - 35 (1) not admissible as evidence in a proceeding initiated under this
 - 36 section unless the offer to cure is delivered by a supplier to the
 - 37 consumer or a representative of the consumer before the supplier
 - 38 files the supplier's initial response to a complaint; and
 - 39 (2) only admissible as evidence in a proceeding initiated under
 - 40 this section to prove that a supplier is not liable for attorney's fees
 - 41 under subsection (k).

42 If the offer to cure is timely delivered by the supplier, the supplier may

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1 submit the offer to cure as evidence to prove in the proceeding in
2 accordance with the Indiana Rules of Trial Procedure that the supplier
3 made an offer to cure.

4 (k) A supplier may not be held liable for the attorney's fees and
5 court costs of the consumer that are incurred following the timely
6 delivery of an offer to cure as described in subsection (j) unless the
7 actual damages awarded, not including attorney's fees and costs, exceed
8 the value of the offer to cure.

9 **(l) If a court finds that a person has knowingly violated section**
10 **3(a)(20) of this chapter, the attorney general, in an action under**
11 **subsection (c), may recover from the person on behalf of the state**
12 **a civil penalty not exceeding one thousand dollars (\$1,000) per**
13 **consumer. In determining the amount of the civil penalty in any**
14 **action by the attorney general under this subsection, the court shall**
15 **consider, among other relevant factors, the frequency and**
16 **persistence of noncompliance by the debt collector, the nature of**
17 **the noncompliance, and the extent to which the noncompliance was**
18 **intentional. A person may not be held liable in any action by the**
19 **attorney general for a violation of section 3(a)(20) of this chapter**
20 **if the person shows by a preponderance of evidence that the**
21 **violation was not intentional and resulted from a bona fide error,**
22 **notwithstanding the maintenance of procedures reasonably**
23 **adapted to avoid the error.**

24 SECTION 13. IC 24-9-2-7 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) "Deceptive act"
26 means an act or a practice as part of a ~~consumer credit mortgage~~
27 ~~transaction involving real property located in Indiana~~ (as defined in
28 **IC 24-9-3-7(a)), or of a real estate transaction (as defined in**
29 **IC 24-9-3-7(b)),** in which a person at the time of the transaction
30 knowingly or intentionally:

- 31 (1) makes a material misrepresentation; or
- 32 (2) conceals material information regarding the terms or
33 conditions of the transaction.

34 (b) For purposes of this section, "knowingly" means having actual
35 knowledge at the time of the transaction.

36 SECTION 14. IC 25-1-7-3 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a) Except as**
38 **provided in subsection (b),** the division is responsible for the
39 investigation of complaints concerning licensees.

40 **(b) The medical licensing board of Indiana shall investigate a**
41 **complaint concerning a physician licensed under IC 25-22.5 and a**
42 **violation specified in IC 25-22.5-2-8. The division shall forward a**

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1 **complaint concerning a physician licensed under IC 25-22.5 and a**
2 **violation specified in IC 25-22.5-2-8 to the medical licensing board**
3 **of Indiana for investigation by the board. However, if the**
4 **complaint includes a violation in addition to a violation specified in**
5 **IC 25-22.5-2-8, the division shall investigate the complaint in its**
6 **entirety and notify the medical licensing board of Indiana of the**
7 **investigation.**

8 SECTION 15. IC 25-1-7-5, AS AMENDED BY P.L.206-2005,
9 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2011]: Sec. 5. (a) Subsection (b)(1) does not apply to:

- 11 (1) a complaint filed by:
 - 12 (A) a member of any of the boards listed in section 1 of this
 - 13 chapter; or
 - 14 (B) the Indiana professional licensing agency; or
- 15 (2) a complaint filed under IC 25-1-5-4.

16 **(b) Except as provided in section 3(b) of this chapter,** the director
17 has the following duties and powers:

- 18 (1) The director shall make an initial determination as to the merit
19 of each complaint. A copy of a complaint having merit shall be
20 submitted to the board having jurisdiction over the licensee's
21 regulated occupation, that board thereby acquiring jurisdiction
22 over the matter except as otherwise provided in this chapter.
- 23 (2) The director shall through any reasonable means notify the
24 licensee of the nature and ramifications of the complaint and of
25 the duty of the board to attempt to resolve the complaint through
26 negotiation.
- 27 (3) The director shall report any pertinent information regarding
28 the status of the complaint to the complainant.
- 29 (4) The director may investigate any written complaint against a
30 licensee. The investigation shall be limited to those areas in which
31 there appears to be a violation of statutes governing the regulated
32 occupation.
- 33 (5) The director has the power to subpoena witnesses and to send
34 for and compel the production of books, records, papers, and
35 documents for the furtherance of any investigation under this
36 chapter. The circuit or superior court located in the county where
37 the subpoena is to be issued shall enforce any such subpoena by
38 the director.

39 SECTION 16. IC 25-1-7-10, AS AMENDED BY P.L.1-2007,
40 SECTION 167, IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) **Except as provided in**
42 **section 3(b) of this chapter,** all complaints and information pertaining

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1 to the complaints shall be held in strict confidence until the attorney
2 general files notice with the board of the attorney general's intent to
3 prosecute the licensee.

4 (b) A person in the employ of the office of attorney general or any
5 of the boards, or any person not a party to the complaint, may not
6 disclose or further a disclosure of information concerning the
7 complaint unless the disclosure is required:

- 8 (1) under law; or
- 9 (2) for the advancement of an investigation.

10 SECTION 17. IC 25-22.5-2-5, AS AMENDED BY P.L.1-2006,
11 SECTION 446, IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2011]: Sec. 5. **Except for a penalty under**
13 **section 8 of this chapter**, the funds obtained from registration and
14 penalty fees shall, upon receipt thereof, be accounted for and paid over
15 by the agency to the treasurer of state and be placed in the general fund
16 of the state. The expenses of the board shall be paid from the general
17 fund upon appropriation being made therefor in the manner required by
18 law for the making of such appropriations. The amount to be expended
19 by the board shall not exceed the amount collected by the board from
20 all sources.

21 SECTION 18. IC 25-22.5-2-8 IS ADDED TO THE INDIANA
22 CODE AS A NEW SECTION TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) The board shall implement**
24 **a program to investigate and assess a civil penalty of not more than**
25 **one thousand dollars (\$1,000) against a physician licensed under**
26 **this article for the following violations:**

- 27 (1) Licensure renewal fraud.
- 28 (2) Failure to timely provide copies of patient medical records.
- 29 (3) Overcharging for copies of patient medical records.
- 30 (4) Improper release of confidential patient information.
- 31 (5) Failure to maintain accurate patient records.
- 32 (6) Improper termination of a physician and patient
- 33 relationship.
- 34 (7) Misleading advertising concerning specific board
- 35 certification.
- 36 (8) Practicing with an expired medical license.
- 37 (9) Providing office based anesthesia without the proper
- 38 accreditation.
- 39 (10) Failure to perform duties required for issuing birth or
- 40 death certificates.

41 (b) An individual who is investigated by the board and found by
42 the board to have committed a violation specified in subsection (a)

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1 may appeal the determination made by the board in accordance
2 with IC 4-21.5.

3 (c) In accordance with the federal Health Care Quality
4 Improvement Act (42 U.S.C. 11132), the board shall report a
5 disciplinary board action that is subject to reporting to the
6 National Practitioner Data Bank. However, the board may not
7 report board action against a physician for only an administrative
8 penalty described in subsection (a). The board's action concerning
9 disciplinary action or an administrative penalty described in
10 subsection (a) shall be conducted at a hearing that is open to the
11 public.

12 (d) The physician compliance fund is established to provide
13 funds for administering and enforcing the investigation of
14 violations specified in subsection (a). The fund shall be
15 administered by the Indiana professional licensing agency.

16 (e) The expenses of administering the physician compliance fund
17 shall be paid from the money in the fund. The fund consists of
18 penalties collected through investigations and assessments by the
19 board concerning violations specified in subsection (a). Money in
20 the fund at the end of a state fiscal year does not revert to the state
21 general fund.

22 SECTION 19. IC 27-4-1-4, AS AMENDED BY P.L.1-2009,
23 SECTION 146, IS AMENDED TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The following are hereby
25 defined as unfair methods of competition and unfair and deceptive acts
26 and practices in the business of insurance:

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

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

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

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

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

41 (E) making any misrepresentation to any policyholder insured
42 in any company for the purpose of inducing or tending to

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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 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

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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;

(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

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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.
- (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,

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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 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.

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

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

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

14 (C) Title insurance.

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

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

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

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

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

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

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

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

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

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

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1 IC 4-22-2 to:
 2 (1) define; and
 3 (2) while the members are on a United States military installation
 4 or elsewhere in Indiana, protect members of the United States
 5 Armed Forces from;
 6 dishonest or predatory insurance practices.

7 SECTION 20. IC 27-7-3-15.5, AS AMENDED BY P.L.35-2010,
 8 SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 15.5. (a) This section applies to ~~a transaction~~
 10 ~~that:~~ **the following transactions:**

11 (1) ~~is a single family residential:~~ **A mortgage transaction (as**
 12 **defined in IC 24-9-3-7(a)) that:**

13 (A) is:
 14 (i) a first lien purchase money mortgage transaction; or
 15 ~~(B)~~ (ii) a refinancing transaction; and
 16 ~~(2)~~ **(B) is closed by a closing agent after December 31, 2009.**

17 **(2) A real estate transaction (as defined in IC 24-9-3-7(b))**
 18 **that:**

19 **(A) does not involve a mortgage transaction described in**
 20 **subdivision (1);**

21 **(B) is closed by a closing agent (as defined in**
 22 **IC 6-1.1-12-43(a)(2)) after December 31, 2011.**

23 **(b) For purposes of this subsection, a person described in this**
 24 **subsection is involved in a transaction to which this section applies**
 25 **if the person participates in or assists with, or will participate in or**
 26 **assist with, a transaction to which this section applies.** ~~Not later than~~
 27 ~~September 1, 2009;~~ The department shall establish and maintain an
 28 electronic system for the collection and storage of the following
 29 information, **to the extent applicable**, concerning any of the following
 30 persons that have participated in or assisted with a transaction to which
 31 this section applies; or that will participate in or assist with a
 32 transaction to which this section applies:

33 **(1) In the case of a transaction described in subsection (a)(1),**
 34 the name and license number (under IC 23-2-5) of each loan
 35 brokerage business involved in the transaction.

36 **(2) In the case of a transaction described in subsection (a)(1),**
 37 the name and license or registration number of any mortgage loan
 38 originator who is:

39 (A) either licensed or registered under state or federal law as
 40 a mortgage loan originator consistent with the Secure and Fair
 41 Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221
 42 Title V); and

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- 1 (B) involved in the transaction.
 2 (3) The name and license number (under IC 25-34.1) of each:
 3 (A) principal broker; and
 4 (B) salesperson or broker-salesperson, if any;
 5 involved in the transaction.
 6 (4) The **following information**:
 7 (A) **The**:
 8 (i) name of; and
 9 ~~(B)~~ (ii) code assigned by the National Association of
 10 Insurance Commissioners (NAIC) to;
 11 each title insurance underwriter involved in the transaction.
 12 **(B) The type of title insurance policy issued in connection**
 13 **with the transaction.**
 14 (5) The name and license number (under IC 27-1-15.6) of each
 15 title insurance agency and agent involved in the transaction as a
 16 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
 17 (6) The **following information**:
 18 (A) **The name and**:
 19 ~~(A)~~ (i) license or certificate number (under IC 25-34.1-3-8)
 20 of each licensed or certified real estate appraiser; or
 21 ~~(B)~~ (ii) license number (under IC 25-34.1) of each broker;
 22 who appraises the property that is the subject of the
 23 transaction.
 24 **(B) The name and registration number (under**
 25 **IC 25-34.1-11-10) of any appraisal management company**
 26 **that performs appraisal management services (as defined**
 27 **in IC 25-34.1-11-3) in connection with the transaction.**
 28 (7) **In the case of a transaction described in subsection (a)(1),**
 29 **the name of the mortgagee creditor and, if the mortgagee**
 30 **creditor is required to be licensed under IC 24-4.4, the license**
 31 **number of the mortgagee creditor.**
 32 (8) In the case of a ~~first lien purchase money mortgage~~ transaction
 33 **described in subsection (a)(1)(A)(i) or (a)(2), the name of the**
 34 **seller of the property that is the subject of the transaction.**
 35 (9) In the case of a ~~first lien purchase money mortgage~~ transaction
 36 **described in subsection (a)(1)(A)(i), the following information**:
 37 (A) The name of the buyer of the property that is the subject of
 38 the transaction.
 39 (B) **The purchase price of the property that is the subject**
 40 **of the transaction.**
 41 (C) **The loan amount of the mortgage transaction.**
 42 (10) **In the case of a transaction described in subsection (a)(2),**

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the following information:

(A) The name of the buyer of the property that is the subject of the transaction.

(B) The purchase price of the property that is the subject of the transaction.

(11) In the case of a transaction described in subsection (a)(1)(A)(ii), the following information:

(A) The name of the borrower in the mortgage transaction.

(B) The loan amount of the refinancing.

~~(10)~~ **(12) The:**

(A) name; and

(B) license number, certificate number, registration number, or other code, as appropriate;

of any other person that ~~participates in or assists with~~ **is involved in** a transaction to which this section applies, as the department may prescribe.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to do the following:

(A) Input information identifying the property that is the subject of the transaction by lot or parcel number, street address, or some other means of identification that the department determines:

- (i) is sufficient to identify the property; and
- (ii) is determinable by the closing agent.

(B) Subject to subsection (d) and to the extent determinable, input the **applicable** information described in subsection (b). ~~with respect to each person described in subsection (b) that participates in or assists with the transaction.~~

(C) Respond to the following questions, **if applicable**:

- (i) "On what date did you receive the closing instructions from the creditor in the transaction?".
- (ii) "On what date did the transaction close?".

(D) Submit the form electronically to a data base maintained by the department.

(d) Not later than the time of the closing, each person described in subsection (b), other than a person described in subsection (b)(8), ~~or (b)(9),~~ **(b)(10), or (b)(11)**, shall provide to the closing agent in the transaction the person's:

(1) legal name; and

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1 (2) license number, certificate number, registration number, or
 2 NAIC code, as appropriate;
 3 to allow the closing agent to comply with subsection (c)(2)(B). ~~★ In~~
 4 **the case of a transaction described in subsection (a)(1),** the person
 5 described in subsection (b)(7) shall, **with the cooperation of any**
 6 **person involved in the transaction and described in subsection**
 7 **(b)(6)(A) or (b)(6)(B),** provide the information required by this
 8 subsection for any person described in subsection (b)(6) that appraises
 9 the property that is the subject of the transaction on behalf of the
 10 person described in subsection (b)(7): **In the case of a transaction**
 11 **described in subsection (a)(1)(A)(ii), the person described in**
 12 **subsection (b)(7) shall also provide the information described in**
 13 **subsection (b)(11).** A person described in subsection (b)(3)(B) who is
 14 involved in the transaction may provide the information required by
 15 this subsection for a person described in subsection (b)(3)(A) that
 16 serves as the principal broker for the person described in subsection
 17 (b)(3)(B). ~~In the case of a first lien purchase money mortgage~~
 18 ~~transaction,~~ The closing agent shall determine the information
 19 described in subsection (b)(8), ~~and~~ (b)(9), **and (b)(10)** from the HUD-1
 20 settlement statement, **or in the case of a transaction described in**
 21 **subsection (a)(2), from the contract or any other document**
 22 **executed by the parties in connection with the transaction.**

23 (e) Except for a person described in subsection (b)(8), ~~or~~ (b)(9),
 24 **(b)(10), or (b)(11),** a person described in subsection (b) who fails to
 25 comply with subsection (d) is subject to a civil penalty of one hundred
 26 dollars (\$100) for each closing with respect to which the person fails
 27 to comply with subsection (d). The penalty:

28 (1) may be enforced by the state agency that has administrative
 29 jurisdiction over the person in the same manner that the agency
 30 enforces the payment of fees or other penalties payable to the
 31 agency; and

32 (2) shall be paid into the home ownership education account
 33 established by IC 5-20-1-27.

34 (f) Subject to subsection (g), the department shall make the
 35 information stored in the data base described in subsection (c)(2)(D)
 36 accessible to:

37 (1) each entity described in IC 4-6-12-4; and

38 (2) the homeowner protection unit established under IC 4-6-12-2.

39 (g) The department, a closing agent who submits a form under
 40 subsection (c), each entity described in IC 4-6-12-4, and the
 41 homeowner protection unit established under IC 4-6-12-2 shall exercise
 42 all necessary caution to avoid disclosure of any information:

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1 (1) concerning a person described in subsection (b), including the
2 person's license, registration, or certificate number; and

3 (2) contained in the data base described in subsection (c)(2)(D);
4 except to the extent required or authorized by state or federal law.

5 (h) The department may adopt rules under IC 4-22-2, **including**
6 **emergency rules under IC 4-22-2-37.1**, to implement this section.
7 Rules adopted by the department under this subsection may establish
8 procedures for the department to:

- 9 (1) establish;
10 (2) collect; and
11 (3) change as necessary;

12 an administrative fee to cover the department's expenses in establishing
13 and maintaining the electronic system required by this section.

14 (i) If the department adopts a rule under IC 4-22-2 to establish an
15 administrative fee to cover the department's expenses in establishing
16 and maintaining the electronic system required by this section, as
17 allowed under subsection (h), the department may:

- 18 (1) require the fee to be paid:
19 (A) to the closing agent responsible for inputting the
20 information and submitting the form described in subsection
21 (c)(2); and
22 (B) by the borrower, **the seller, or the buyer** in the
23 transaction;

24 (2) allow the closing agent described in subdivision (1)(A) to
25 retain a part of the fee collected to cover the closing agent's costs
26 in inputting the information and submitting the form described in
27 subsection (c)(2); and

28 (3) require the closing agent to pay the remainder of the fee
29 collected to the department for deposit in the title insurance
30 enforcement fund established by IC 27-7-3.6-1, for the
31 department's use in establishing and maintaining the electronic
32 system required by this section.

33 SECTION 21. IC 27-8-11-4.7 IS ADDED TO THE INDIANA
34 CODE AS A NEW SECTION TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2011]: **Sec. 4.7. (a) As used in this section,**
36 **"covered services" means health care services for which any**
37 **reimbursement is available under an insured's policy, regardless**
38 **of whether the actual reimbursement is contractually limited by a**
39 **deductible, copayment, coinsurance, waiting period, annual or**
40 **lifetime maximum, frequency limitation, alternative benefit**
41 **payment, or any other limitation.**

42 (b) An insurer may not, under an agreement under section 3 of

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1 this chapter, require a dentist to accept an amount set by the
2 insurer as payment for health care services provided to an insured
3 unless the health care services are covered services under the
4 insured's policy.

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

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

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

12 SECTION 22. IC 27-13-34-15.2 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2011]: Sec. 15.2. (a) As used in this section,
15 "covered services" means limited health services for which any
16 coverage is available under an enrollee's individual contract or
17 group contract, regardless of whether the actual coverage is
18 contractually limited by a deductible, copayment, coinsurance,
19 waiting period, annual or lifetime maximum, frequency limitation,
20 alternative benefit payment, or any other limitation.

21 (b) A limited service health maintenance organization may not,
22 under a contract described in section 15 of this chapter, require a
23 dentist to accept an amount set by the limited service health
24 maintenance organization as payment for limited health services
25 provided to an enrollee unless the limited health services are
26 covered services under the enrollee's individual contract or group
27 contract.

28 (c) A limited service health maintenance organization may not
29 provide merely de minimis reimbursement or coverage in an effort
30 to avoid the requirements of this section.

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

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

35 SECTION 23. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1273, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 16, line 5, delete "shall" and insert "**may**".

and when so amended that said bill do pass.

(Reference is to HB 1273 as introduced.)

FOLEY, Chair

Committee Vote: yeas 9, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1273 be amended to read as follows:

Page 16, line 5, delete "Not later than September 1, 2011, the" and insert "**The**".

(Reference is to HB 1273 as printed January 21, 2011.)

MCMILLIN

COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Economic Development, to which was referred House Bill No. 1273, 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 3, delete lines 24 through 26.

Page 4, between lines 14 and 15, begin a new line double block indented and insert:

"(C) Collecting or attempting to collect a debt owed or due, or asserted to be owed or due, to another person."

Page 4, between lines 28 and 29, begin a new line double block indented and insert:

"(C) A debt collector (as defined in 15 U.S.C. 1692a(6))."

Page 6, between lines 17 and 18, begin a new line block indented

EH 1273—LS 7269/DI 101+

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and insert:

"(14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5))."

Page 6, delete lines 35 through 42, begin a new paragraph and insert:

"SECTION 10. IC 24-5-0.5-3, AS AMENDED BY P.L.1-2009, SECTION 137, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

- (1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.
- (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.
- (3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.
- (4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.
- (5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.
- (6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.
- (7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.
- (8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.
- (9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer

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transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed

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business name (as described in IC 23-15-1) in a local telephone directory if:

- (A) the name misrepresents the supplier's geographic location;
- (B) the listing fails to identify the locality and state of the supplier's business;
- (C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and
- (D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

- (A) the name misrepresents the supplier's geographic location;
- (B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and
- (C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) The violation by a supplier of IC 24-3-4 concerning cigarettes for import or export.

(18) The act of a supplier in knowingly selling or reselling a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer, unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) The violation by a supplier of 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(20) The violation by a supplier of the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), including any rules or regulations issued under the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(21) A violation of IC 24-5-7 (concerning health spa services), as set forth in IC 24-5-7-17.

(22) A violation of IC 24-5-8 (concerning business opportunity transactions), as set forth in IC 24-5-8-20.

(23) A violation of IC 24-5-10 (concerning home consumer transactions), as set forth in IC 24-5-10-18.

(24) A violation of IC 24-5-11 (concerning home improvement

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contracts), as set forth in IC 24-5-11-14.

(25) A violation of IC 24-5-12 (concerning telephone solicitations), as set forth in IC 24-5-12-23.

(26) A violation of IC 24-5-13.5 (concerning buyback motor vehicles), as set forth in IC 24-5-13.5-14.

(27) A violation of IC 24-5-14 (concerning automatic dialing-announcing devices), as set forth in IC 24-5-14-13.

(28) A violation of IC 24-5-15 (concerning credit services organizations), as set forth in IC 24-5-15-11.

(29) A violation of IC 24-5-16 (concerning unlawful motor vehicle subleasing), as set forth in IC 24-5-16-18.

(30) A violation of IC 24-5-17 (concerning environmental marketing claims), as set forth in IC 24-5-17-14.

(31) A violation of IC 24-5-19 (concerning deceptive commercial solicitation), as set forth in IC 24-5-19-11.

(32) A violation of IC 24-5-21 (concerning prescription drug discount cards), as set forth in IC 24-5-21-7.

(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.

(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is

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disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15) **and (a)(16)**, a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.

SECTION 11. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

- (1) three (3) times the actual damages of the consumer suffering the loss; or
- (2) one thousand dollars (\$1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)), except for purchases of time shares and camping club memberships. **This subsection does not apply with respect to a deceptive act described in section 3(a)(20) of this chapter.** This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection

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(a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. **This subsection does not apply with respect to a deceptive act described in section 3(a)(20) of this chapter.** Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act, **including a deceptive act described in section 3(a)(20) of this chapter, notwithstanding subsections (a) and (b).** However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

- (1) issue an injunction;
- (2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;
- (3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and
- (4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and

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disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) **or 3(a)(20)** of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

- (1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).
- (2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

- (1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and
- (2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier

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made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

(l) If a court finds that a person has knowingly violated section 3(a)(20) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty not exceeding one thousand dollars (\$1,000) per consumer. In determining the amount of the civil penalty in any action by the attorney general under this subsection, the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt collector, the nature of the noncompliance, and the extent to which the noncompliance was intentional. A person may not be held liable in any action by the attorney general for a violation of section 3(a)(20) of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid the error."

Delete pages 7 through 10.

Page 11, delete line 1.

Page 12, delete lines 31 through 34.

Page 12, line 35, delete "(C)" and insert "(B)".

Page 14, line 18, delete "(b)(6)(C)," and insert "(b)(6)(B),".

Page 16, delete lines 2 through 17.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1273 as reprinted January 25, 2011.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 7, Nays 1.

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Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Engrossed House Bill 1273, which is eligible for second reading, has been reassigned to the Committee on Health and Provider Services.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Engrossed House Bill No. 1273, 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 lines 7 and 8, begin a new paragraph and insert:

"SECTION 2. IC 16-37-1-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Except as **provided in subsection (c) or (d) or as** otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

(c) A person who:

(1) is licensed under IC 25 in a profession listed in section 3.1(c) of this chapter; and

(2) recklessly violates or fails to comply with this chapter; is subject only to sanctions under IC 25-1-9-4(a)(3).

(d) The state department may not begin sanctioning a person for failing to submit a document in electronic format as required in section 3.1 of this chapter until January 1, 2012."

Page 14, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 14. IC 25-1-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a) Except as provided in subsection (b),** the division is responsible for the investigation of complaints concerning licensees.

(b) The medical licensing board of Indiana shall investigate a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8. The division shall forward a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8 to the medical licensing board of Indiana for investigation by the board. However, if the

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complaint includes a violation in addition to a violation specified in IC 25-22.5-2-8, the division shall investigate the complaint in its entirety and notify the medical licensing board of Indiana of the investigation.

SECTION 15. IC 25-1-7-5, AS AMENDED BY P.L.206-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) Subsection (b)(1) does not apply to:

- (1) a complaint filed by:
 - (A) a member of any of the boards listed in section 1 of this chapter; or
 - (B) the Indiana professional licensing agency; or
- (2) a complaint filed under IC 25-1-5-4.

(b) Except as provided in section 3(b) of this chapter, the director has the following duties and powers:

- (1) The director shall make an initial determination as to the merit of each complaint. A copy of a complaint having merit shall be submitted to the board having jurisdiction over the licensee's regulated occupation, that board thereby acquiring jurisdiction over the matter except as otherwise provided in this chapter.
- (2) The director shall through any reasonable means notify the licensee of the nature and ramifications of the complaint and of the duty of the board to attempt to resolve the complaint through negotiation.
- (3) The director shall report any pertinent information regarding the status of the complaint to the complainant.
- (4) The director may investigate any written complaint against a licensee. The investigation shall be limited to those areas in which there appears to be a violation of statutes governing the regulated occupation.
- (5) The director has the power to subpoena witnesses and to send for and compel the production of books, records, papers, and documents for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the director.

SECTION 16. IC 25-1-7-10, AS AMENDED BY P.L.1-2007, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) **Except as provided in section 3(b) of this chapter,** all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.

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(b) A person in the employ of the office of attorney general or any of the boards, or any person not a party to the complaint, may not disclose or further a disclosure of information concerning the complaint unless the disclosure is required:

- (1) under law; or
- (2) for the advancement of an investigation.

SECTION 17. IC 25-22.5-2-5, AS AMENDED BY P.L.1-2006, SECTION 446, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. **Except for a penalty under section 8 of this chapter**, the funds obtained from registration and penalty fees shall, upon receipt thereof, be accounted for and paid over by the agency to the treasurer of state and be placed in the general fund of the state. The expenses of the board shall be paid from the general fund upon appropriation being made therefor in the manner required by law for the making of such appropriations. The amount to be expended by the board shall not exceed the amount collected by the board from all sources.

SECTION 18. IC 25-22.5-2-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) The board shall implement a program to investigate and assess a civil penalty of not more than one thousand dollars (\$1,000) against a physician licensed under this article for the following violations:**

- (1) Licensure renewal fraud.
- (2) Failure to timely provide copies of patient medical records.
- (3) Overcharging for copies of patient medical records.
- (4) Improper release of confidential patient information.
- (5) Failure to maintain accurate patient records.
- (6) Improper termination of a physician and patient relationship.
- (7) Misleading advertising concerning specific board certification.
- (8) Practicing with an expired medical license.
- (9) Providing office based anesthesia without the proper accreditation.
- (10) Failure to perform duties required for issuing birth or death certificates.

(b) An individual who is investigated by the board and found by the board to have committed a violation specified in subsection (a) may appeal the determination made by the board in accordance with IC 4-21.5.

(c) In accordance with the federal Health Care Quality

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Improvement Act (42 U.S.C. 11132), the board shall report a disciplinary board action that is subject to reporting to the National Practitioner Data Bank. However, the board may not report board action against a physician for only an administrative penalty described in subsection (a). The board's action concerning disciplinary action or an administrative penalty described in subsection (a) shall be conducted at a hearing that is open to the public.

(d) The physician compliance fund is established to provide funds for administering and enforcing the investigation of violations specified in subsection (a). The fund shall be administered by the Indiana professional licensing agency.

(e) The expenses of administering the physician compliance fund shall be paid from the money in the fund. The fund consists of penalties collected through investigations and assessments by the board concerning violations specified in subsection (a). Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 19. IC 27-4-1-4, AS AMENDED BY P.L.1-2009, SECTION 146, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (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

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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 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

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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;
- (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

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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.
- (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

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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 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

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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 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

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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) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

(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 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.

(31) Violating IC 27-8-11-4.7 or IC 27-13-34-15.2 concerning contracts for dental services.

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

(1) define; and

(2) while the members are on a United States military installation

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or elsewhere in Indiana, protect members of the United States Armed Forces from; dishonest or predatory insurance practices."

Page 19, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 21. IC 27-8-11-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4.7. (a) As used in this section, "covered services" means health care services for which any reimbursement is available under an insured's policy, regardless of whether the actual reimbursement is contractually limited by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or any other limitation.

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

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

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

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

SECTION 22. IC 27-13-34-15.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15.2. (a) As used in this section, "covered services" means limited health services for which any coverage is available under an enrollee's individual contract or group contract, regardless of whether the actual coverage is contractually limited by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or any other limitation.

(b) A limited service health maintenance organization may not, under a contract described in section 15 of this chapter, require a dentist to accept an amount set by the limited service health maintenance organization as payment for limited health services provided to an enrollee unless the limited health services are covered services under the enrollee's individual contract or group contract.

(c) A limited service health maintenance organization may not

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provide merely de minimis reimbursement or coverage in an effort to avoid the requirements of this section.

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

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

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to EHB 1273 as printed March 9, 2011.)

MILLER, Chairperson

Committee Vote: Yeas 6, Nays 0.

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