



Reprinted  
April 6, 2011

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# ENGROSSED HOUSE BILL No. 1273

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DIGEST OF HB 1273 (Updated April 5, 2011 3:12 pm - DI 104)

**Citations Affected:** IC 4-6; IC 9-13; IC 9-23; IC 16-28; IC 16-37; IC 24-4.7; IC 24-5; IC 24-9; IC 25-1; IC 25-13; IC 25-14; IC 25-22.5; IC 25-35.6; IC 27-4; IC 27-7; IC 27-8; IC 27-13; noncode.

**Synopsis:** Consumer protection, unfair practices, and licensing matters. Provides that it is an unfair practice for an automotive manufacturer or distributor to fail to pay certain claims made by an automotive dealer. Authorizes an automotive manufacturer or distributor to: (1) audit certain claims; or (2) charge back to a dealer any amounts paid on false or materially unsubstantiated claims. Defines health care provider for purposes of the statute authorizing the attorney general to take certain  
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**Effective:** Upon passage; July 1, 2010 (retroactive); December 31, 2010 (retroactive); July 1, 2011.

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## 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)

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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.  
April 5, 2011, read second time, amended, ordered engrossed.

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actions with respect to abandoned health records and other records containing personal information. 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 meets certain requirements. Requires the attorney general's consumer protection division (division) to notify Indiana residents of the right of certain subscribers or users to place a telephone number on the listing. Specifies what is included as a "telephone sales call". Requires that the holder of an inactive dentist license meet competency standards before obtaining an active license. Specifies that an entity approved by the state board of dentistry is to conduct the examination of an applicant for a dentist or dental hygiene license. Limits the number of times a dental license applicant may take any portion of the examination to three times. Allows a requirement of remediation before an applicant may take the examination for a third time. Eliminates the dental intern permit and establishes a limited dental residency permit and a limited dental faculty permit. Changes the percentage from 5% to 10% on the number of instructors that can teach full time at a dental school under an instructor's license and removes the 2013 expiration of the instructor's license. Requires that at least half of a dentist's continuing education hours during each license period be from a live presentation or live workshop. Establishes a new fee collected upon application for the issuance or renewal of a dentist license, and provides for proceeds of the fee to be deposited in a fund for use in administering and enforcing the law concerning dentists and dental hygienists. Authorizes a physician last in attendance of a deceased to initiate the document process for the death record. 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. 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. Specifies reporting requirements of penalties and prohibits the board from reporting specified administrative penalties. Requires certain certified nurse aides to be certified by the state department and requires the state department to: (1) establish a program; (2) prescribe education and training programs; (3) determine specified standards; and (4) establish annual certification fees; for certified nurse aides who work in health facilities. Recognizes speech-language pathologists who: (1) before September 1, 1990, completed all the course work and obtained all the experience required to receive a life license from the department of education; and (2) was issued a life license by the department of education; as eligible to supervise speech-language pathology support personnel (in lieu of another requirement to have obtained a certificate of clinical competence from a nationally recognized association). Removes a provision requiring that, to supervise speech-language pathology support personnel, a speech-language pathologist have at least three years of clinical experience. Provides for licensure of speech-language pathologists if certain continuing education standards are met. Voids part of an administrative rule concerning qualification requirements to supervise speech-language pathology support personnel. 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; and (2) include cross references to certain consumer protection statutes, the violation of which constitutes a deceptive act. 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

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"deceptive act" includes a knowing or intentional misrepresentation made regarding real estate transactions and mortgage transactions. Defines "debt collector". Provides that maintenance of 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 certain residential real estate transactions. 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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Reprinted  
April 6, 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 9-13-2-19.5 IS ADDED TO THE INDIANA CODE  
9 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2011]: **Sec. 19.5. "Charge back", for purposes of IC 9-23-3, has**  
11 **the meaning set forth in IC 9-23-3-0.2.**  
12 SECTION 3. IC 9-23-3-0.2 IS ADDED TO THE INDIANA CODE  
13 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
14 1, 2011]: **Sec. 0.2. As used in this chapter, "charge back" means a**  
15 **manufacturer induced return of incentive payments to a**

EH 1273—LS 7269/DI 101+



1 **manufacturer by a dealer. The term includes a manufacturer**  
2 **drawing funds from an account of a dealer.**

3 SECTION 4. IC 9-23-3-15, AS AMENDED BY P.L.76-2007,  
4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2011]: Sec. 15. (a) It is an unfair practice for a manufacturer  
6 or distributor to:

- 7 (1) fail to pay all claims made by dealers for compensation for:
  - 8 (A) delivery and preparation work; ~~and~~
  - 9 (B) warranty work; ~~and~~
  - 10 (C) **incentive payments;**
- 11 within thirty (30) days after approval;
- 12 (2) fail to approve or disapprove the claims within thirty (30) days
- 13 after receipt; or
- 14 (3) disapprove a claim without notice to the dealer in writing of
- 15 the grounds for disapproval.

- 16 (b) **Subject to subsection (c),** a manufacturer or distributor may:
  - 17 (1) audit claims made by a dealer **for warranty work or**
  - 18 **incentive payments for up to one (1) year after the date on**
  - 19 **which a claim is paid; or**
  - 20 (2) charge back to a dealer any amounts paid on false or
  - 21 unsubstantiated claims **for warranty work or incentive**
  - 22 **payments.**

23 for up to two (2) years after the date on which a claim is paid.  
24 However, the limitations of this subsection do not apply if the  
25 manufacturer or distributor can prove fraud on a claim. A manufacturer  
26 or distributor shall not discriminate among dealers with regard to  
27 auditing or charging back claims.

28 (c) **The limitations of subsection (b) do not apply if the**  
29 **manufacturer or distributor can prove fraud on a claim.**

30 SECTION 5. IC 16-28-1-11 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) Unless an  
32 individual is certified under this section:

- 33 (1) the individual may not practice as a qualified medication aide
- 34 **or a certified nurse aide; and**
- 35 (2) a facility may not employ the individual as a qualified
- 36 medication aide **or a certified nurse aide.**

- 37 (b) The ~~council~~ **state department** shall do the following:
  - 38 (1) Establish a program for the certification of qualified
  - 39 medication aides **and certified nurse aides** who work in facilities
  - 40 licensed under this article.

- 41 (2) Prescribe education and training programs for qualified
- 42 medication aides **and certified nurse aides,** including course and

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- 1 inservice requirements. The training program must include a
- 2 competency test that the individual must pass before being
- 3 granted an initial certification.
- 4 (3) Determine the standards concerning the functions that may be
- 5 performed by a qualified medication aide **and a certified nurse**
- 6 **aide.**
- 7 (4) Establish annual certification fees for qualified medication
- 8 aides.
- 9 (5) Adopt rules under IC 4-22-2 necessary to implement and
- 10 enforce this section.
- 11 (c) The **state** department shall maintain a registry of each individual
- 12 who is:
- 13 (1) certified as a:
- 14 (A) qualified medication aide; **or**
- 15 (B) **certified nurse aide; or**
- 16 (2) **registered as a home health aide under rules adopted**
- 17 **under IC 16-27-1-7.**
- 18 (d) The department may conduct hearings for violations of this
- 19 section under IC 4-21.5.
- 20 SECTION 6. IC 16-37-1-3.1, AS ADDED BY P.L.61-2009,
- 21 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 DECEMBER 31, 2010 (RETROACTIVE)]: Sec. 3.1. (a) Beginning
- 23 January 1, 2011, the state department shall establish the Indiana birth
- 24 registration system (IBRS) for recording in an electronic format live
- 25 births in Indiana.
- 26 (b) Beginning January 1, 2011, the state department shall establish
- 27 the Indiana death registration system (IDRS) for recording in an
- 28 electronic format deaths in Indiana.
- 29 (c) Submission of records on births and deaths shall be entered by:
- 30 (1) funeral directors;
- 31 (2) physicians;
- 32 (3) coroners;
- 33 (4) medical examiners;
- 34 (5) persons in attendance at birth; and
- 35 (6) local health departments;
- 36 using the electronic system created by the state department under this
- 37 section.
- 38 (d) A person in attendance at a live birth shall report a birth to the
- 39 local health officer in accordance with IC 16-37-2-2.
- 40 (e) Death records shall be submitted as follows, using the Indiana
- 41 death registration system:
- 42 (1) The:

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1                   **(A) physician last in attendance upon the deceased; or**  
 2                   **(B) person in charge of interment;**  
 3 shall initiate the document process. ~~and~~ **If the person in charge**  
 4 **of interment initiates the process, the person in charge of**  
 5 **interment shall** electronically submit the certificate required  
 6 under IC 16-37-3-5 to the physician last in attendance upon the  
 7 deceased not later than five (5) days after the death.

8 (2) The physician last in attendance upon the deceased shall  
 9 electronically certify to the local health department the cause of  
 10 death on the certificate of death not later than five (5) days after:

11                   **(A) initiating the document process; or**  
 12                   **(B) receiving under IC 16-37-3-5 the electronic notification**  
 13                   **from the person in charge of interment.**

14 (3) The local health officer shall submit the reports required under  
 15 IC 16-37-1-5 to the state department not later than five (5) days  
 16 after electronically receiving under IC 16-37-3-5 the completed  
 17 certificate of death from the physician last in attendance.

18 SECTION 7. IC 16-37-1-13 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Except as  
 20 **provided in subsection (c) or (d) or as** otherwise provided, a person  
 21 who recklessly violates or fails to comply with this chapter commits a  
 22 Class B misdemeanor.

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

24 **(c) A person who:**

25 **(1) is licensed under IC 25 in a profession listed in section**  
 26 **3.1(c) of this chapter; and**

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

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

32 SECTION 8. IC 16-37-3-3, AS AMENDED BY P.L.61-2009,  
 33 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2011]: Sec. 3. (a) The **physician last in attendance upon the**  
 35 **deceased or the person in charge of interment shall file a certificate of**  
 36 **death or of stillbirth with the local health officer of the jurisdiction in**  
 37 **which the death or stillbirth occurred.**

38 (b) Notwithstanding subsection (a), beginning January 1, 2011, **the**  
 39 **physician last in attendance upon the deceased or** the person in  
 40 charge of interment shall use the Indiana death registration system  
 41 established under IC 16-37-1-3.1 to file a certificate of death with the  
 42 local health officer of the jurisdiction in which the death occurred. The

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1 local health officer shall retain a copy of the certificate of death.  
 2 SECTION 9. IC 16-37-3-4 IS AMENDED TO READ AS  
 3 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. The **physician last**  
 4 **in attendance upon the deceased or the** person in charge of interment  
 5 shall secure the personal data required by the state department by rules  
 6 adopted under IC 4-22-2 for preparation of the certificate of death or  
 7 of stillbirth from the persons best qualified to give the information.  
 8 SECTION 10. IC 16-37-3-5, AS AMENDED BY P.L.61-2009,  
 9 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2011]: Sec. 5. (a) **If the person in charge of interment initiates**  
 11 **the process, the person in charge of interment** shall present a  
 12 certificate of death to the physician last in attendance upon the  
 13 deceased, who shall certify the cause of death upon the certificate of  
 14 death or of stillbirth.  
 15 (b) Notwithstanding subsection (a), beginning January 1, 2011,  
 16 using the Indiana death registration system established under  
 17 IC 16-37-1-3.1, **if the person in charge of interment initiates the**  
 18 **process, the person in charge of interment** shall electronically  
 19 provide a certificate of death to the physician last in attendance upon  
 20 the deceased. The physician last in attendance upon the deceased shall  
 21 electronically certify to the local health department the cause of death  
 22 on the certificate of death, using the Indiana death registration system.  
 23 SECTION 11. IC 24-4.7-2-2 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) "Consumer"  
 25 means a residential telephone subscriber who: ~~is an actual or a~~  
 26 ~~prospective:~~  
 27 (1) **for the telephone service received:**  
 28 (A) **has a place of primary use in Indiana; or**  
 29 (B) **is issued an Indiana telephone number or an Indiana**  
 30 **identification number; and**  
 31 (2) **is an actual or a prospective:**  
 32 (†) (A) purchaser, lessee, or recipient of consumer goods or  
 33 services; or  
 34 (‡) (B) donor to a charitable organization.  
 35 (b) **The term includes a user of a prepaid wireless calling service**  
 36 **(as defined in IC 6-2.5-1-22.4) who:**  
 37 (1) **is issued an Indiana telephone number or an Indiana**  
 38 **identification number for the service; or**  
 39 (2) **purchases prepaid wireless calling service in a retail**  
 40 **transaction that is sourced to Indiana (as determined under**  
 41 **IC 6-2.5-12-16).**  
 42 SECTION 12. IC 24-4.7-2-5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. "Doing business  
2 in Indiana" means:

- 3 (1) making; or
  - 4 (2) **causing others to make;**
- 5 telephone sales calls to consumers located in Indiana whether the  
6 telephone sales calls are made from a location in Indiana or outside  
7 Indiana.

8 SECTION 13. IC 24-4.7-2-7 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. "Listing" refers  
10 to the no telephone sales solicitation listing published by the division  
11 under IC 24-4.7-3 that lists the ~~names~~ **telephone numbers** of ~~persons~~  
12 **consumers** who do not wish to receive telephone sales calls.

13 SECTION 14. IC 24-4.7-2-7.5 IS ADDED TO THE INDIANA  
14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
15 [EFFECTIVE UPON PASSAGE]: Sec. 7.5. "Place of primary use",  
16 **with respect to a telephone subscriber, means the street address**  
17 **representative of where the subscriber's use of the telephone**  
18 **service primarily occurs, which must be:**

- 19 (1) **the residential street address of the subscriber or, in the**  
20 **case of a subscriber of interconnected VOIP service, the**  
21 **subscriber's registered location (as defined in 47 CFR 9.3);**  
22 **and**
- 23 (2) **in the case of mobile telecommunications services (as**  
24 **defined in IC 6-8.1-15-7), within the licensed service area of**  
25 **the home service provider, as set forth in IC 6-8.1-15-8.**

26 SECTION 15. IC 24-4.7-2-8 IS AMENDED TO READ AS  
27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. "Telephone  
28 number" means a residential telephone number **that:**

- 29 (1) **is assigned to a subscriber who has a place of primary use**  
30 **in Indiana; or**
- 31 (2) **otherwise represents an Indiana telephone number or is**  
32 **associated with an Indiana identification number.**

33 SECTION 16. IC 24-4.7-2-9 IS AMENDED TO READ AS  
34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) "Telephone  
35 sales call" means a telephone call made to a consumer for any of the  
36 following purposes:

- 37 (1) Solicitation of a sale of consumer goods or services.
- 38 (2) Solicitation of a charitable contribution.
- 39 (3) Obtaining information that will or may be used for the direct  
40 solicitation of a sale of consumer goods or services or an  
41 extension of credit for such purposes.

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

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- 1           (1) A call made by use of **an** automated dialing ~~or~~ **device**.
- 2           (2) **A call made by use of a** recorded message ~~devices~~ **device**.
- 3           (3) **Transmission of:**
- 4                 (A) **a text message; or**
- 5                 (B) **a graphic message;**
- 6           **using short message service (SMS).**
- 7           (4) **Transmission of:**
- 8                 (A) **an image;**
- 9                 (B) **a photograph; or**
- 10                (C) **a multimedia message;**
- 11           **using multimedia messaging service (MMS).**
- 12           SECTION 17. IC 24-4.7-3-4 IS AMENDED TO READ AS
- 13           FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The division
- 14           shall notify Indiana residents of the rights and duties created by this
- 15           article, **including the right of any of the following consumers to**
- 16           **place a telephone number on the listing established and maintained**
- 17           **under section 1 of this chapter:**
- 18                (1) **Subscribers of interconnected VOIP service.**
- 19                (2) **Subscribers of mobile telecommunications service (as**
- 20                **defined in IC 6-8.1-15-7).**
- 21                (3) **Users of a prepaid wireless calling service, as described in**
- 22                **IC 24-4.7-2-2(b).**
- 23           SECTION 18. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007,
- 24           SECTION 165, IS AMENDED TO READ AS FOLLOWS
- 25           [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) As used in this chapter:
- 26                (1) "Consumer transaction" means a sale, lease, assignment,
- 27                award by chance, or other disposition of an item of personal
- 28                property, real property, a service, or an intangible, except
- 29                securities and policies or contracts of insurance issued by
- 30                corporations authorized to transact an insurance business under
- 31                the laws of the state of Indiana, with or without an extension of
- 32                credit, to a person for purposes that are primarily personal,
- 33                familial, charitable, agricultural, or household, or a solicitation to
- 34                supply any of these things. However, the term includes the
- 35                following:
- 36                    (A) A transfer of structured settlement payment rights under
- 37                    IC 34-50-2.
- 38                    (B) An unsolicited advertisement sent to a person by telephone
- 39                    facsimile machine offering a sale, lease, assignment, award by
- 40                    chance, or other disposition of an item of personal property,
- 41                    real property, a service, or an intangible.
- 42                    (C) **Collecting or attempting to collect a debt owed or due,**

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**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.**

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

- (i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or
- (ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

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- 1 (7) "Uncured deceptive act" means a deceptive act:  
 2 (A) with respect to which a consumer who has been damaged  
 3 by such act has given notice to the supplier under section 5(a)  
 4 of this chapter; and  
 5 (B) either:  
 6 (i) no offer to cure has been made to such consumer within  
 7 thirty (30) days after such notice; or  
 8 (ii) the act has not been cured as to such consumer within a  
 9 reasonable time after the consumer's acceptance of the offer  
 10 to cure.
- 11 (8) "Incurable deceptive act" means a deceptive act done by a  
 12 supplier as part of a scheme, artifice, or device with intent to  
 13 defraud or mislead. The term includes a failure of a transferee of  
 14 structured settlement payment rights to timely provide a true and  
 15 complete disclosure statement to a payee as provided under  
 16 IC 34-50-2 in connection with a direct or indirect transfer of  
 17 structured settlement payment rights.
- 18 (9) "Pyramid promotional scheme" means any program utilizing  
 19 a pyramid or chain process by which a participant in the program  
 20 gives a valuable consideration exceeding one hundred dollars  
 21 (\$100) for the opportunity or right to receive compensation or  
 22 other things of value in return for inducing other persons to  
 23 become participants for the purpose of gaining new participants  
 24 in the program. The term does not include ordinary sales of goods  
 25 or services to persons who are not purchasing in order to  
 26 participate in such a scheme.
- 27 (10) "Promoting a pyramid promotional scheme" means:  
 28 (A) inducing or attempting to induce one (1) or more other  
 29 persons to become participants in a pyramid promotional  
 30 scheme; or  
 31 (B) assisting another in promoting a pyramid promotional  
 32 scheme.
- 33 (11) "Elderly person" means an individual who is at least  
 34 sixty-five (65) years of age.
- 35 (12) "Telephone facsimile machine" means equipment that has  
 36 the capacity to transcribe text or images, or both, from:  
 37 (A) paper into an electronic signal and to transmit that signal  
 38 over a regular telephone line; or  
 39 (B) an electronic signal received over a regular telephone line  
 40 onto paper.
- 41 (13) "Unsolicited advertisement" means material advertising the  
 42 commercial availability or quality of:

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- 1 (A) property;
- 2 (B) goods; or
- 3 (C) services;
- 4 that is transmitted to a person without the person's prior express
- 5 invitation or permission, in writing or otherwise.
- 6 **(14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5)).**
- 7 **(15) "Debt collector" has the meaning set forth in 15 U.S.C.**
- 8 **1692a(6). The term does not include a person admitted to the**
- 9 **practice of law in Indiana if the person is acting within the**
- 10 **course and scope of the person's practice as an attorney.**

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

- 12 (1) "Directory assistance" means the disclosure of telephone
- 13 number information in connection with an identified telephone
- 14 service subscriber by means of a live operator or automated
- 15 service.
- 16 (2) "Local telephone directory" refers to a telephone classified
- 17 advertising directory or the business section of a telephone
- 18 directory that is distributed by a telephone company or directory
- 19 publisher to subscribers located in the local exchanges contained
- 20 in the directory. The term includes a directory that includes
- 21 listings of more than one (1) telephone company.
- 22 (3) "Local telephone number" refers to a telephone number that
- 23 has the three (3) number prefix used by the provider of telephone
- 24 service for telephones physically located within the area covered
- 25 by the local telephone directory in which the number is listed. The
- 26 term does not include long distance numbers or 800-, 888-, or
- 27 900- exchange numbers listed in a local telephone directory.

28 SECTION 19. IC 24-5-0.5-3, AS AMENDED BY P.L.1-2009,  
29 SECTION 137, IS AMENDED TO READ AS FOLLOWS  
30 [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The following acts, and the  
31 following representations as to the subject matter of a consumer  
32 transaction, made orally, in writing, or by electronic communication,  
33 by a supplier, are deceptive acts:

- 34 (1) That such subject of a consumer transaction has sponsorship,
- 35 approval, performance, characteristics, accessories, uses, or
- 36 benefits it does not have which the supplier knows or should
- 37 reasonably know it does not have.
- 38 (2) That such subject of a consumer transaction is of a particular
- 39 standard, quality, grade, style, or model, if it is not and if the
- 40 supplier knows or should reasonably know that it is not.
- 41 (3) That such subject of a consumer transaction is new or unused,
- 42 if it is not and if the supplier knows or should reasonably know

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- 1 that it is not.
- 2 (4) That such subject of a consumer transaction will be supplied
- 3 to the public in greater quantity than the supplier intends or
- 4 reasonably expects.
- 5 (5) That replacement or repair constituting the subject of a
- 6 consumer transaction is needed, if it is not and if the supplier
- 7 knows or should reasonably know that it is not.
- 8 (6) That a specific price advantage exists as to such subject of a
- 9 consumer transaction, if it does not and if the supplier knows or
- 10 should reasonably know that it does not.
- 11 (7) That the supplier has a sponsorship, approval, or affiliation in
- 12 such consumer transaction the supplier does not have, and which
- 13 the supplier knows or should reasonably know that the supplier
- 14 does not have.
- 15 (8) That such consumer transaction involves or does not involve
- 16 a warranty, a disclaimer of warranties, or other rights, remedies,
- 17 or obligations, if the representation is false and if the supplier
- 18 knows or should reasonably know that the representation is false.
- 19 (9) That the consumer will receive a rebate, discount, or other
- 20 benefit as an inducement for entering into a sale or lease in return
- 21 for giving the supplier the names of prospective consumers or
- 22 otherwise helping the supplier to enter into other consumer
- 23 transactions, if earning the benefit, rebate, or discount is
- 24 contingent upon the occurrence of an event subsequent to the time
- 25 the consumer agrees to the purchase or lease.
- 26 (10) That the supplier is able to deliver or complete the subject of
- 27 the consumer transaction within a stated period of time, when the
- 28 supplier knows or should reasonably know the supplier could not.
- 29 If no time period has been stated by the supplier, there is a
- 30 presumption that the supplier has represented that the supplier
- 31 will deliver or complete the subject of the consumer transaction
- 32 within a reasonable time, according to the course of dealing or the
- 33 usage of the trade.
- 34 (11) That the consumer will be able to purchase the subject of the
- 35 consumer transaction as advertised by the supplier, if the supplier
- 36 does not intend to sell it.
- 37 (12) That the replacement or repair constituting the subject of a
- 38 consumer transaction can be made by the supplier for the estimate
- 39 the supplier gives a customer for the replacement or repair, if the
- 40 specified work is completed and:
  - 41 (A) the cost exceeds the estimate by an amount equal to or
  - 42 greater than ten percent (10%) of the estimate;

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- 1 (B) the supplier did not obtain written permission from the
- 2 customer to authorize the supplier to complete the work even
- 3 if the cost would exceed the amounts specified in clause (A);
- 4 (C) the total cost for services and parts for a single transaction
- 5 is more than seven hundred fifty dollars (\$750); and
- 6 (D) the supplier knew or reasonably should have known that
- 7 the cost would exceed the estimate in the amounts specified in
- 8 clause (A).
- 9 (13) That the replacement or repair constituting the subject of a
- 10 consumer transaction is needed, and that the supplier disposes of
- 11 the part repaired or replaced earlier than seventy-two (72) hours
- 12 after both:
- 13 (A) the customer has been notified that the work has been
- 14 completed; and
- 15 (B) the part repaired or replaced has been made available for
- 16 examination upon the request of the customer.
- 17 (14) Engaging in the replacement or repair of the subject of a
- 18 consumer transaction if the consumer has not authorized the
- 19 replacement or repair, and if the supplier knows or should
- 20 reasonably know that it is not authorized.
- 21 (15) The act of misrepresenting the geographic location of the
- 22 supplier by listing a fictitious business name or an assumed
- 23 business name (as described in IC 23-15-1) in a local telephone
- 24 directory if:
- 25 (A) the name misrepresents the supplier's geographic location;
- 26 (B) the listing fails to identify the locality and state of the
- 27 supplier's business;
- 28 (C) calls to the local telephone number are routinely forwarded
- 29 or otherwise transferred to a supplier's business location that
- 30 is outside the calling area covered by the local telephone
- 31 directory; and
- 32 (D) the supplier's business location is located in a county that
- 33 is not contiguous to a county in the calling area covered by the
- 34 local telephone directory.
- 35 (16) The act of listing a fictitious business name or assumed
- 36 business name (as described in IC 23-15-1) in a directory
- 37 assistance database if:
- 38 (A) the name misrepresents the supplier's geographic location;
- 39 (B) calls to the local telephone number are routinely forwarded
- 40 or otherwise transferred to a supplier's business location that
- 41 is outside the local calling area; and
- 42 (C) the supplier's business location is located in a county that

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- 1 is not contiguous to a county in the local calling area.
- 2 (17) The violation by a supplier of IC 24-3-4 concerning
- 3 cigarettes for import or export.
- 4 (18) The act of a supplier in knowingly selling or reselling a
- 5 product to a consumer if the product has been recalled, whether
- 6 by the order of a court or a regulatory body, or voluntarily by the
- 7 manufacturer, distributor, or retailer, unless the product has been
- 8 repaired or modified to correct the defect that was the subject of
- 9 the recall.
- 10 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 11 rules or regulations issued under 47 U.S.C. 227.
- 12 **(20) The violation by a supplier of the federal Fair Debt**
- 13 **Collection Practices Act (15 U.S.C. 1692 et seq.), including any**
- 14 **rules or regulations issued under the federal Fair Debt**
- 15 **Collection Practices Act (15 U.S.C. 1692 et seq.).**
- 16 (21) A violation of IC 24-5-7 (concerning health spa services),
- 17 as set forth in IC 24-5-7-17.
- 18 (22) A violation of IC 24-5-8 (concerning business opportunity
- 19 transactions), as set forth in IC 24-5-8-20.
- 20 (23) A violation of IC 24-5-10 (concerning home consumer
- 21 transactions), as set forth in IC 24-5-10-18.
- 22 (24) A violation of IC 24-5-11 (concerning home improvement
- 23 contracts), as set forth in IC 24-5-11-14.
- 24 (25) A violation of IC 24-5-12 (concerning telephone
- 25 solicitations), as set forth in IC 24-5-12-23.
- 26 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 27 vehicles), as set forth in IC 24-5-13.5-14.
- 28 (27) A violation of IC 24-5-14 (concerning automatic
- 29 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 30 (28) A violation of IC 24-5-15 (concerning credit services
- 31 organizations), as set forth in IC 24-5-15-11.
- 32 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 33 vehicle subleasing), as set forth in IC 24-5-16-18.
- 34 (30) A violation of IC 24-5-17 (concerning environmental
- 35 marketing claims), as set forth in IC 24-5-17-14.
- 36 (31) A violation of IC 24-5-19 (concerning deceptive
- 37 commercial solicitation), as set forth in IC 24-5-19-11.
- 38 (32) A violation of IC 24-5-21 (concerning prescription drug
- 39 discount cards), as set forth in IC 24-5-21-7.
- 40 (33) A violation of IC 24-5-23.5-7 (concerning real estate
- 41 appraisals), as set forth in IC 24-5-23.5-9.
- 42 (34) A violation of IC 24-5-26 (concerning identity theft), as

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**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 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 20. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011]: Sec. 4. (a) A person relying upon an uncured or  
2 incurable deceptive act may bring an action for the damages actually  
3 suffered as a consumer as a result of the deceptive act or five hundred  
4 dollars (\$500), whichever is greater. The court may increase damages  
5 for a willful deceptive act in an amount that does not exceed the greater  
6 of:

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

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

22 (b) Any person who is entitled to bring an action under subsection  
23 (a) on the person's own behalf against a supplier for damages for a  
24 deceptive act may bring a class action against such supplier on behalf  
25 of any class of persons of which that person is a member and which has  
26 been damaged by such deceptive act, subject to and under the Indiana  
27 Rules of Trial Procedure governing class actions, except as herein  
28 expressly provided. Except as provided in subsection (j), the court may  
29 award reasonable attorney fees to the party that prevails in a class  
30 action under this subsection, provided that such fee shall be determined  
31 by the amount of time reasonably expended by the attorney and not by  
32 the amount of the judgment, although the contingency of the fee may  
33 be considered. Any money or other property recovered in a class action  
34 under this subsection which cannot, with due diligence, be restored to  
35 consumers within one (1) year after the judgment becomes final shall  
36 be returned to the party depositing the same. This subsection does not  
37 apply to a consumer transaction in real property, except for purchases  
38 of time shares and camping club memberships. **This subsection does  
39 not apply with respect to a deceptive act described in section  
40 3(a)(20) of this chapter.** Actual damages awarded to a class have  
41 priority over any civil penalty imposed under this chapter.

42 (c) The attorney general may bring an action to enjoin a deceptive

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

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

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

17 (e) In any action under subsection (a) or (b), upon the filing of the  
18 complaint or on the appearance of any defendant, claimant, or any  
19 other party, or at any later time, the trial court, the supreme court, or the  
20 court of appeals may require the plaintiff, defendant, claimant, or any  
21 other party or parties to give security, or additional security, in such  
22 sum as the court shall direct to pay all costs, expenses, and  
23 disbursements that shall be awarded against that party or which that  
24 party may be directed to pay by any interlocutory order by the final  
25 judgment or on appeal.

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

35 (g) If a court finds any person has knowingly violated section 3 or  
36 10 of this chapter, other than section 3(a)(19) **or 3(a)(20)** of this  
37 chapter, the attorney general, in an action pursuant to subsection (c),  
38 may recover from the person on behalf of the state a civil penalty of a  
39 fine not exceeding five thousand dollars (\$5,000) per violation.

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

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

3 (2) For a violation other than a knowing or intentional violation,  
4 five hundred dollars (\$500).

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

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

12 (j) An offer to cure is:

13 (1) not admissible as evidence in a proceeding initiated under this  
14 section unless the offer to cure is delivered by a supplier to the  
15 consumer or a representative of the consumer before the supplier  
16 files the supplier's initial response to a complaint; and

17 (2) only admissible as evidence in a proceeding initiated under  
18 this section to prove that a supplier is not liable for attorney's fees  
19 under subsection (k).

20 If the offer to cure is timely delivered by the supplier, the supplier may  
21 submit the offer to cure as evidence to prove in the proceeding in  
22 accordance with the Indiana Rules of Trial Procedure that the supplier  
23 made an offer to cure.

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

29 **(l) If a court finds that a person has knowingly violated section**  
30 **3(a)(20) of this chapter, the attorney general, in an action under**  
31 **subsection (c), may recover from the person on behalf of the state**  
32 **a civil penalty not exceeding one thousand dollars (\$1,000) per**  
33 **consumer. In determining the amount of the civil penalty in any**  
34 **action by the attorney general under this subsection, the court shall**  
35 **consider, among other relevant factors, the frequency and**  
36 **persistence of noncompliance by the debt collector, the nature of**  
37 **the noncompliance, and the extent to which the noncompliance was**  
38 **intentional. A person may not be held liable in any action by the**  
39 **attorney general for a violation of section 3(a)(20) of this chapter**  
40 **if the person shows by a preponderance of evidence that the**  
41 **violation was not intentional and resulted from a bona fide error,**  
42 **notwithstanding the maintenance of procedures reasonably**

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1 adapted to avoid the error. A person may not be held liable in any  
2 action for a violation of this chapter for contacting a person other  
3 than the debtor, provided such contact is made in compliance with  
4 the Fair Debt Collection Practices Act.

5 SECTION 21. IC 24-9-2-7 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) "Deceptive act"  
7 means an act or a practice as part of a ~~consumer credit~~ mortgage  
8 transaction ~~involving real property located in Indiana (as defined in~~  
9 **IC 24-9-3-7(a)), or of a real estate transaction (as defined in**  
10 **IC 24-9-3-7(b)),** in which a person at the time of the transaction  
11 knowingly or intentionally:

- 12 (1) makes a material misrepresentation; or
- 13 (2) conceals material information regarding the terms or  
14 conditions of the transaction.

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

17 SECTION 22. IC 25-1-7-3 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) **Except as**  
19 **provided in subsection (b),** the division is responsible for the  
20 investigation of complaints concerning licensees.

21 (b) **The medical licensing board of Indiana shall investigate a**  
22 **complaint concerning a physician licensed under IC 25-22.5 and a**  
23 **violation specified in IC 25-22.5-2-8. The division shall forward a**  
24 **complaint concerning a physician licensed under IC 25-22.5 and a**  
25 **violation specified in IC 25-22.5-2-8 to the medical licensing board**  
26 **of Indiana for investigation by the board. However, if the**  
27 **complaint includes a violation in addition to a violation specified in**  
28 **IC 25-22.5-2-8, the division shall investigate the complaint in its**  
29 **entirety and notify the medical licensing board of Indiana of the**  
30 **investigation.**

31 SECTION 23. IC 25-1-7-5, AS AMENDED BY P.L.206-2005,  
32 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2011]: Sec. 5. (a) Subsection (b)(1) does not apply to:

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

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

- 41 (1) The director shall make an initial determination as to the merit  
42 of each complaint. A copy of a complaint having merit shall be

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

20 SECTION 24. IC 25-1-7-10, AS AMENDED BY P.L.1-2007,  
 21 SECTION 167, IS AMENDED TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) **Except as provided in**  
 23 **section 3(b) of this chapter**, all complaints and information pertaining  
 24 to the complaints shall be held in strict confidence until the attorney  
 25 general files notice with the board of the attorney general's intent to  
 26 prosecute the licensee.

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

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

33 SECTION 25. IC 25-13-1-4 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) Any person  
 35 desiring to practice dental hygiene in Indiana must procure from the  
 36 board a license to practice dental hygiene. To procure a license, the  
 37 applicant must submit to the board proof of graduation from an  
 38 institution for educating dental hygienists that is approved by the board  
 39 and other credentials required by this chapter, together with an  
 40 application on forms prescribed and furnished by the board. Each  
 41 applicant must pay to the board an application fee set by the board  
 42 under section 5 of this chapter at the time the application is made and

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1 must pass an examination ~~satisfactory to~~ **administered by an entity**  
 2 **approved by** the board. ~~For those applicants who fail to pass an initial~~  
 3 ~~examination; subsequent examinations may be had before the board~~  
 4 ~~upon payment of a fee set by the board under section 5 of this chapter~~  
 5 ~~for each subsequent examination.~~ The board may establish under  
 6 section 5 of this chapter additional requirements as a prerequisite to  
 7 taking an examination for any applicant who has failed the examination  
 8 two (2) or more times. Application fees are not refundable.

9 (b) An applicant described under subsection (a) shall, at the request  
 10 of the board, make an appearance before the board.

11 SECTION 26. IC 25-13-1-6 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. ~~When applying to~~  
 13 ~~the board for examination; the applicant must submit an application~~  
 14 ~~and the applicant's credentials; except for proof of the applicant's~~  
 15 ~~graduation from an institution for educating dental hygienists; in the~~  
 16 ~~form and manner prescribed by the board at least forty-five (45) days~~  
 17 ~~prior to the examination date. The applicant must submit proof of the~~  
 18 ~~applicant's graduation at least seven (7) days before the examination~~  
 19 ~~date. The~~ **An applicant:**

20 (1) must not have been convicted of a crime that has a direct  
 21 bearing on the applicant's ability to practice competently; ~~and~~

22 (2) must be a graduate of a school for dental hygienists that:

23 (A) is accredited by the Commission on Dental Accreditation  
 24 of the American Dental Association;

25 (B) is recognized by the board; and

26 (C) requires a formal course of training of not less than two (2)  
 27 years of eight (8) months each;

28 **(3) must pass an examination administered by an entity**  
 29 **approved by the board; and**

30 **(4) may not take any part of the examination described in**  
 31 **subdivision (3) more than three (3) times.**

32 SECTION 27. IC 25-13-1-7 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. ~~The board's~~  
 34 ~~examination of applicants to practice dental hygiene shall be held at~~  
 35 ~~such time and place as may be called by the board for its examination~~  
 36 ~~of applicants for dental license. The dental hygienist examination shall~~  
 37 ~~include a practical clinical test; the applicant supplying the patient and~~  
 38 ~~necessary instruments and equipment; and such written or oral~~  
 39 ~~examination (or both) embracing the subjects taught in dental~~  
 40 ~~hygienist's schools as the board may require. The board may recognize~~  
 41 ~~licenses issued by other states as provided in section 17 of this chapter,~~  
 42 ~~and may recognize the examination of the national board of dental~~

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1 examiners, if it is consistent with the board's requirements.

2 SECTION 28. IC 25-13-1-8, AS AMENDED BY P.L.105-2008,  
3 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2011]: Sec. 8. (a) A license to practice dental hygiene in  
5 Indiana ~~shall~~ **may** be issued to candidates who pass ~~the board's~~  
6 **examinations: an examination administered by an entity that has**  
7 **been approved by the board.** The license shall be valid for the  
8 remainder of the renewal period in effect on the date the license was  
9 issued.

10 (b) Prior to the issuance of the license, the applicant shall pay a fee  
11 set by the board under section 5 of this chapter. A license issued by the  
12 board expires on a date specified by the Indiana professional licensing  
13 agency under IC 25-1-5-4(k) of each even-numbered year.

14 (c) An applicant for license renewal must satisfy the following  
15 conditions:

16 (1) Pay the renewal fee set by the board under section 5 of this  
17 chapter on or before the renewal date specified by the Indiana  
18 professional licensing agency in each even-numbered year.

19 (2) Subject to IC 25-1-4-3, provide the board with a sworn  
20 statement signed by the applicant attesting that the applicant has  
21 fulfilled the continuing education requirements under IC 25-13-2.

22 (3) Be currently certified or successfully complete a course in  
23 basic life support through a program approved by the board. The  
24 board may waive the basic life support requirement for applicants  
25 who show reasonable cause.

26 (d) If the holder of a license does not renew the license on or before  
27 the renewal date specified by the Indiana professional licensing agency,  
28 the license expires and becomes invalid without any action by the  
29 board.

30 (e) A license invalidated under subsection (d) may be reinstated by  
31 the board in three (3) years or less after such invalidation if the holder  
32 of the license meets the requirements under IC 25-1-8-6(c).

33 (f) If a license remains invalid under subsection (d) for more than  
34 three (3) years, the holder of the invalid license may obtain a reinstated  
35 license by meeting the requirements for reinstatement under  
36 IC 25-1-8-6(d). **The board may require the licensee to participate**  
37 **in remediation or pass an examination administered by an entity**  
38 **approved by the board.**

39 (g) The board may require the holder of an invalid license who files  
40 an application under this subsection to appear before the board and  
41 explain why the holder failed to renew the license.

42 (h) The board may adopt rules under section 5 of this chapter

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1 establishing requirements for the reinstatement of a license that has  
2 been invalidated for more than three (3) years.

3 (i) The license to practice must be displayed at all times in plain  
4 view of the patients in the office where the holder is engaged in  
5 practice. No person may lawfully practice dental hygiene who does not  
6 possess a license and its current renewal.

7 (j) Biennial renewals of licenses are subject to the provisions of  
8 IC 25-1-2.

9 SECTION 29. IC 25-13-1-10.5, AS ADDED BY P.L.121-2007,  
10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2011]: Sec. 10.5. A student pursuing a course of study in  
12 dental hygiene may administer dental anesthetics during an educational  
13 course on the practice of dental anesthetics if the course is:

14 (1) supervised by a dentist **licensed under IC 25-14** and trained  
15 in the administration of dental anesthetics; and

16 (2) conducted at a school described in section 6(2) of this chapter.

17 SECTION 30. IC 25-13-1-10.6, AS ADDED BY P.L.134-2008,  
18 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2011]: Sec. 10.6. (a) A licensed dental hygienist may  
20 administer local dental anesthetics under the direct supervision of a  
21 licensed dentist **under IC 25-14** if the dental hygienist has:

22 (1) completed board approved educational requirements,  
23 including cardiopulmonary resuscitation and emergency care  
24 training; and

25 (2) received a board issued dental hygiene anesthetic permit.

26 (b) Local dental anesthetics do not include nitrous oxide or similar  
27 ~~anesthetics.~~ **analgesics.**

28 SECTION 31. IC 25-13-1-17.2 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17.2. (a) The board  
30 may classify a license as inactive if the board receives written  
31 notification from the dental hygienist that the dental hygienist will not  
32 practice as a dental hygienist in Indiana.

33 (b) The board may issue a license to the holder of an inactive license  
34 under this section if the applicant:

35 (1) pays the renewal fee set by the board;

36 (2) pays the reinstatement fee set by the board; ~~and~~

37 (3) meets the continuing education requirements set by the board;  
38 **and**

39 (4) **meets competency standards set by the board.**

40 (c) **The board may require a licensee whose license has been**  
41 **inactive for more than three (3) years to participate in remediation**  
42 **or pass an examination administered by an entity approved by the**

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**board.**

SECTION 32. IC 25-13-1-20 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 20. (a) An individual who:**

- (1) is licensed under; and**
- (2) fails to comply with;**

**this article or rules adopted under this article is subject to discipline under IC 25-1-9.**

**(b) An individual who is licensed under this article is responsible for knowing the standards of conduct and practice established by this article and rules adopted under this article.**

SECTION 33. IC 25-13-2-6, AS AMENDED BY P.L.105-2008, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 6. (a)** A dental hygienist must complete at least fourteen (14) credit hours in continuing education courses each license period.

**(b)** Credit hours may be applied under this section only toward the credit hour requirement for the license period during which the credit hours are earned.

**(c)** During a license period, a dental hygienist may not earn more than five (5) credit hours toward the requirements under this section for continuing education courses that relate specifically to the area of practice management.

**(d)** Not more than two (2) credit hours for certification programs in basic life support required under IC 25-13-1-8(c)(3) may be applied toward the credit hour requirement during each license period.

**(e) During a license period, at least half of the required minimum credit hours must be earned through live presentations or live workshops.**

SECTION 34. IC 25-13-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 10. (a)** A member of the board may attend or monitor a continuing education course.

**(b)** An approved organization must provide the board with course information or materials requested by the board.

**(c)** If the board determines that an approved organization does not meet the requirements of this chapter, the board shall do the following:

- (1)** Provide written notification to the organization of the noncompliance specifying the items of noncompliance and the conditions of reinstatement.
- (2)** Deny credit hours awarded by the organization from the time that the organization receives a notice until the date of reinstatement.

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1           (3) Make reasonable efforts to notify dental hygienists of the  
2           organization's noncompliance status.

3           (d) The board shall adopt rules under IC 4-22-2 to implement this  
4           chapter.

5           SECTION 35. IC 25-14-1-1.5 AS AMENDED BY P.L.134-2008,  
6           SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7           JULY 1, 2011]: Sec. 1.5. ~~As used in~~ **The following definitions apply**  
8           **throughout** this article:

9           (1) "Agency" refers to the Indiana professional licensing agency  
10           established by IC 25-1-5-3.

11           (2) "Board" refers to the state board of dentistry established under  
12           this chapter.

13           (3) "Deep sedation" means a ~~controlled state of depressed drug~~  
14           **induced depression of** consciousness ~~accompanied by partial loss~~  
15           of protective reflexes; including inability to respond purposefully  
16           to verbal command; produced by a pharmacologic method:  
17           **during which cardiovascular function is usually maintained**  
18           **and the individual may:**

19           (A) not be easily aroused;

20           (B) be able to respond purposefully following repeated or  
21           painful stimulation;

22           (C) have an impaired ability to independently maintain  
23           ventilatory function;

24           (D) require assistance in maintaining a patent airway; and

25           (E) have inadequate spontaneous ventilation.

26           (4) "Dental assistant" means a qualified dental staff member,  
27           other than a licensed dental hygienist, who assists a licensed  
28           dentist with patient care while working under the dentist's direct  
29           supervision.

30           (5) "Direct supervision" means that a licensed dentist is physically  
31           present in the facility when patient care is provided by the dental  
32           assistant.

33           (6) "Enteral route of administration" means a technique of  
34           administering an agent so that it is absorbed through the  
35           gastrointestinal tract or oral mucosa.

36           (7) "General anesthesia" means a ~~controlled state of~~  
37           unconsciousness; accompanied by partial or complete loss of  
38           protective reflexes; including inability to independently maintain  
39           an airway and respond purposefully to physical stimulation or  
40           verbal command; produced by a pharmacologic method: **drug**  
41           **induced loss of consciousness during which cardiovascular**  
42           **function may be impaired and the individual:**

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- 1 (A) is not arousable, even by painful stimulation;
- 2 (B) often has an impaired ability to independently
- 3 maintain ventilatory function;
- 4 (C) often requires assistance in maintaining a patent
- 5 airway; and
- 6 (D) may require positive pressure ventilation because of
- 7 depressed spontaneous ventilation or drug induced
- 8 depression of neuromuscular function.

9 (8) "Light parenteral conscious sedation" means a minimally  
 10 depressed level of consciousness under which an individual  
 11 retains the ability to independently and continuously maintain an  
 12 airway and respond appropriately to physical stimulation and  
 13 verbal command; produced by an intravenous pharmacologic  
 14 method. "Moderate sedation" means a drug induced  
 15 depression of consciousness during which cardiovascular  
 16 function is usually maintained and the individual:

- 17 (A) responds purposefully to verbal commands, either
- 18 alone or with light tactile stimulation;
- 19 (B) does not require intervention to maintain a patent
- 20 airway; and
- 21 (C) has adequate spontaneous ventilation.

22 (9) "Parenteral route of administration" means a technique  
 23 of administering an agent by intravenous or intramuscular  
 24 injection so that it bypasses the gastrointestinal tract.

25 SECTION 36. IC 25-14-1-2 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The state board  
 27 of dentistry is established and consists of:

- 28 (1) nine (9) practicing dentists licensed under IC 25-14 who
- 29 must have been in practice in this state Indiana for not less than
- 30 the five (5) years;
- 31 (2) one (1) practicing dental hygienist who:
  - 32 (A) has been practicing in Indiana as a dental hygienist:
    - 33 (i) in 2011 and 2012, for at least three (3) years; and
    - 34 (ii) after 2012, for at least five (5) years; and
  - 35 (B) is licensed under IC 25-13-1; and
- 36 (3) one (1) member to represent the general public who must be
- 37 a resident to this state and in no way associated with the
- 38 profession of dentistry other than as a consumer.

39 All eleven (11) members of the board shall be appointed by the  
 40 governor for a term of three (3) years each. Any member of the board  
 41 may serve until the member's successor is appointed and qualified  
 42 under this chapter. A member may serve consecutive terms, but no

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1 member may serve more than three (3) terms or a total of nine (9)  
2 years.

3 (b) The appointment of the dentist members shall be made in a  
4 manner that, at all times, each dentist member on the board represents  
5 and is a resident of one (1) of nine (9) examiner districts set forth in  
6 this subsection. Each dentist member shall be chiefly responsible in the  
7 performance of his or her duties with regard to the district from which  
8 he or she is appointed. The nine (9) dentist members' districts consist  
9 of the following counties:

10 (1) District 1. Tipton, Hamilton, Hendricks, Marion, Hancock,  
11 Morgan, Johnson, and Shelby.

12 (2) District 2. Lake, Porter, LaPorte, and Jasper.

13 (3) District 3. St. Joseph, Elkhart, Starke, Marshall, Kosciusko,  
14 and Fulton.

15 (4) District 4. LaGrange, Steuben, Jay, Noble, Whitley, Allen,  
16 Huntington, Wells, DeKalb, and Adams.

17 (5) District 5. Knox, Daviess, Gibson, Pike, Dubois, Posey,  
18 Vanderburgh, Warrick, Spencer, and Perry.

19 (6) District 6. Newton, Benton, White, Pulaski, Cass, Miami,  
20 Wabash, Grant, Howard, Carroll, Warren, Tippecanoe, and  
21 Clinton.

22 (7) District 7. Vermillion, Parke, Fountain, Montgomery, Boone,  
23 Putnam, Vigo, Clay, Sullivan, Owen, Greene, and Martin.

24 (8) District 8. Madison, Delaware, Blackford, Randolph, Rush,  
25 Fayette, Union, Henry, and Wayne.

26 (9) District 9. Monroe, Brown, Bartholomew, Decatur, Franklin,  
27 Lawrence, Jackson, Jennings, Ripley, Dearborn, Orange,  
28 Washington, Scott, Jefferson, Switzerland, Ohio, Crawford,  
29 Harrison, Floyd, and Clark.

30 (c) The board ~~shall examine all applicants for licenses who present~~  
31 ~~the credentials set forth in this article and may~~ issue licenses to ~~all~~  
32 applicants who pass ~~a satisfactory~~ **an** examination **administered by an**  
33 **entity that has been approved by the board.**

34 SECTION 37. IC 25-14-1-3 IS AMENDED TO READ AS  
35 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) A person desiring  
36 to begin the practice of dentistry in Indiana shall procure from the  
37 board a license to practice dentistry in Indiana. To procure the license,  
38 the applicant must submit to the board proof of graduation from a  
39 dental college recognized by the board. The board may recognize  
40 dental schools accredited by the Commission on Dental Accreditation  
41 of the American Dental Association, if the board is satisfied that the  
42 recognition is consistent with the board's requirements. Every applicant

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1 shall pay to the board a fee, set by the board under section 13 of this  
 2 chapter, at the time of making the application and must pass an  
 3 examination before the board at the time and place to be fixed by the  
 4 board **administered by an entity approved by the board and may**  
 5 **not take any portion of the examination more than three (3) times.**  
 6 The applicant must purchase examination supplies and pay a fee for the  
 7 use of the examination facility.

8 (b) For those applicants who fail to pass an initial examination  
 9 subsequent examinations, may be taken upon payment of a fee, set by  
 10 the board under section 13 of this chapter, for each subsequent  
 11 examination; If the applicant fails to pass the examination prescribed  
 12 by the board, the applicant is entitled to the right of review of the  
 13 board's action on the examination under IC 4-21.5. The board may  
 14 establish, under section 13 of this chapter, additional requirements as  
 15 a prerequisite to taking an examination for an applicant who has failed  
 16 the examination two (2) or more times.

17 (c) (b) A fee paid under this article may not be refunded.

18 SECTION 38. IC 25-14-1-3.1 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.1. (a) A dentist must  
 20 have a permit to administer:

21 (1) general ~~anesthesia~~; **anesthesia/deep sedation; or**

22 (2) ~~deep moderate~~ sedation **using a parenteral route of**  
 23 **administration; or**

24 (3) ~~light parenteral conscious sedation;~~

25 to a patient.

26 (b) The board shall establish by rule the educational and training  
 27 requirements for the issuance and renewal of a permit required by  
 28 subsection (a).

29 (c) The board shall establish the requirements for a program of  
 30 education and training for pediatric anesthesiology.

31 (d) The requirements for a permit issued under this section must be  
 32 based on the **current** American Dental Association's "Guidelines for  
 33 Teaching the Comprehensive Control of Pain and Anxiety in Dentistry"  
 34 and accompanying policy statement adopted in November 1985. **Pain**  
 35 **Control and Sedation to Dentists and Dental Students", as adopted**  
 36 **by the American Dental Association House of Delegates.**

37 (e) A permit issued under this section must be renewed biennially.

38 SECTION 39. IC 25-14-1-3.5, AS AMENDED BY P.L.1-2006,  
 39 SECTION 431, IS AMENDED TO READ AS FOLLOWS  
 40 [EFFECTIVE JULY 1, 2011]: Sec. 3.5. (a) Under IC 25-1-8 the board  
 41 shall establish, under IC 25-13-1-5 and section 13 of this chapter, fees  
 42 sufficient to implement IC 25-13 and IC 25-14.

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1 (b) **Except for the fee collected in subsection (c)**, all money  
 2 received by the board under this chapter shall be paid to the agency,  
 3 which shall:

- 4 (1) give a proper receipt for the same; and  
 5 (2) at the end of each month:  
 6 (A) report to the auditor of state the total amount received  
 7 from all sources; and  
 8 (B) deposit the entire amount of such receipts with the state  
 9 treasurer to be deposited by the treasurer in the general fund  
 10 of the state.

11 **Except as provided in subsection (c) and section 3.7 of this chapter**,  
 12 all expenses incurred in the administration of this chapter shall be paid  
 13 from the general fund upon appropriation being made therefor in the  
 14 manner provided by law for making such appropriations.

15 (c) **In addition to the fee to issue or renew a license, the board**  
 16 **shall establish a fee of twenty dollars (\$20) to be paid when an**  
 17 **individual applies for the issuance or renewal of a license under:**

- 18 (1) IC 25-13; or  
 19 (2) this article;

20 **to provide funds for administering and enforcing the provisions of**  
 21 **IC 25-13 and this article, including investigating and taking action**  
 22 **against individuals who violate IC 25-13 or this article. All funds**  
 23 **collected under this subsection shall be deposited into the dental**  
 24 **compliance fund established by section 3.7 of this chapter.**

25 SECTION 40. IC 25-14-1-3.7 IS ADDED TO THE INDIANA  
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 27 [EFFECTIVE JULY 1, 2011]: **Sec. 3.7. (a) The dental compliance**  
 28 **fund is established to provide funds for administering and**  
 29 **enforcing the provisions of this article, including investigating and**  
 30 **taking enforcement action against violators of:**

- 31 (1) IC 25-1-9 concerning an individual licensed under  
 32 IC 25-13 or this article;  
 33 (2) IC 25-13; and  
 34 (3) this article.

35 **The fund shall be administered by the Indiana professional**  
 36 **licensing agency.**

37 (b) **The expenses of administering the fund shall be paid from**  
 38 **the money in the fund. The fund consists of:**

- 39 (1) **proceeds of the fee collected under section 3.5(c) of this**  
 40 **chapter; and**  
 41 (2) **finances and civil penalties collected through investigations of**  
 42 **violations of:**

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1 (A) IC 25-1-9 concerning individuals licensed under  
2 IC 25-13 or this article;

3 (B) IC 25-13; and

4 (C) this article;

5 conducted by the board or the attorney general.

6 (c) The treasurer of state shall invest the money in the fund not  
7 currently needed to meet the obligations of the fund in the same  
8 manner as other public money may be invested.

9 (d) Money in the fund at the end of a state fiscal year does not  
10 revert to the state general fund.

11 (e) The attorney general and the Indiana professional licensing  
12 agency may enter into a memorandum of understanding to provide  
13 the attorney general with funds to conduct investigations and  
14 pursue enforcement action against violators of:

15 (1) IC 25-1-9 if the individual is licensed under IC 25-13 or  
16 this article;

17 (2) IC 25-13; and

18 (3) this article.

19 (f) The attorney general and the Indiana professional licensing  
20 agency shall present any memorandum of understanding under  
21 subsection (e) annually to the board for review.

22 SECTION 41. IC 25-14-1-5 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The board may  
24 at its discretion issue a ~~dental intern~~ **limited dental residency** permit  
25 or dental hygienist intern permit to a school for use by any person  
26 **student or former student** to whom it has not issued a license but who  
27 is **attending or is** a graduate of a dental college or school of dental  
28 hygiene recognized by the board and is otherwise qualified to take the  
29 regular examination for a license given by the board. **completing a**  
30 **residency program.** However, an applicant the school for a dental  
31 intern permit or dental hygienist intern permit shall furnish the board  
32 **with** satisfactory evidence that the applicant has been:

33 (1) appointed to a dental or a dental hygiene internship in a  
34 hospital or similar institution operated under the laws of Indiana;  
35 or

36 (2) employed as:

37 (A) an instructor in a dental school recognized and approved  
38 by the Indiana dental board; or

39 (B) a teacher or operator in a clinic in a public or parochial  
40 school; college; or university.

41 **student or former student is enrolled in an accredited dental**  
42 **residency or fellowship program and is using the permit only for**

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1 **school purposes. The school shall maintain the permit at the school.**  
 2 (b) The fee for the permit shall be set by the board under section 13  
 3 of this chapter.  
 4 (c) Any person ~~receiving~~ **using a school's limited dental residency**  
 5 ~~or dental hygienist intern~~ permit may practice dentistry ~~or dental~~  
 6 ~~hygiene~~ only in a hospital or other **board approved** institution  
 7 designated in the permit and only under the direction of a licensed  
 8 dentist who is a member of the dental staff of ~~such the~~ hospital or other  
 9 institution. The ~~intern's dental or dental hygiene~~ practice shall be  
 10 limited to bona fide patients of ~~such the~~ hospital or other institution.  
 11 (d) The permit:  
 12 (1) shall be:  
 13 (A) valid for only one (1) year from date of issue; ~~and shall be~~  
 14 (B) renewable in the discretion of the board upon the payment  
 15 of a fee determined by the board under section 13 of this  
 16 chapter; and  
 17 (2) may be recalled at any time by the board.  
 18 SECTION 42. IC 25-14-1-5.5 IS ADDED TO THE INDIANA  
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 20 [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. (a) The board may issue a**  
 21 **limited dental faculty permit. An applicant for a permit under this**  
 22 **section must meet the following requirements:**  
 23 (1) **Be a graduate of an American Dental Association**  
 24 **accredited dental program, as determined by the board.**  
 25 (2) **Be employed by an accredited dental school.**  
 26 (b) **An individual granted a limited dental faculty permit under**  
 27 **this section:**  
 28 (1) **may use the permit to practice only at the school where the**  
 29 **individual is employed and as a part of the individual's**  
 30 **research or teaching responsibilities; and**  
 31 (2) **may not use the permit to obtain:**  
 32 (A) **a license under section 3 of this chapter; or**  
 33 (B) **reciprocity or endorsement under this article.**  
 34 (c) **The board shall set the permit fee under section 13 of this**  
 35 **chapter.**  
 36 SECTION 43. IC 25-14-1-12, AS AMENDED BY P.L.1-2006,  
 37 SECTION 433, IS AMENDED TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 2011]: **Sec. 12. (a) The board shall hold not less**  
 39 **than two (2) regular meetings in each year at such place as may be**  
 40 **fixed by the board and as often in addition as may be necessary for the**  
 41 **transaction of such business as may properly come under the provisions**  
 42 **of this chapter, and it shall have power to make all necessary rules in**

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1 accordance with this chapter. Additional meetings may be called at any  
2 time by the president or any six (6) members of the board to be held at  
3 such time and place as may be designated in the call. Six (6) members  
4 of the board constitute a quorum. A majority of the quorum may  
5 transact business. The board shall elect a president and a secretary. For  
6 their services, the members shall receive per diem and travel expenses  
7 as otherwise provided by law.

8 (b) It shall be the duty of the board through the agency to keep a  
9 record of all applications for licenses for a period of time designated by  
10 the board, subject to the final approval of the oversight committee on  
11 public records under IC 5-15-5.1-19. Such records shall contain all the  
12 facts set forth in the application, including the action of the board. ~~The~~  
13 ~~board shall also retain all examination papers for a period of one (1)~~  
14 ~~year from the date upon which the examination is held.~~ The agency  
15 shall carry out the administrative functions of the board and shall  
16 provide necessary personnel to enable the board to properly carry out  
17 and enforce this chapter.

18 (c) The board may affiliate with the American Association of Dental  
19 ~~Examiners Boards~~ as an active member thereof and may pay the  
20 regular annual dues of the association out of any available funds of the  
21 board, which are obtained by examination fees or registration renewal  
22 fees as provided by law. However, the affiliation with the American  
23 Association of Dental ~~Examiners Boards~~ shall not impair, restrict,  
24 enlarge, or modify any of the rights, powers, duties, or functions of the  
25 board as prescribed by the laws of this state. The board may designate  
26 one (1) of its members as a delegate of any meeting of the association,  
27 and such delegate member shall receive the regular per diem paid to  
28 members of the board for their services on the board and the member's  
29 necessary expenses while traveling to and from and attending such  
30 meetings.

31 SECTION 44. IC 25-14-1-15 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. ~~In case~~ **If** judgment  
33 is rendered in favor of the plaintiff in any action brought under the  
34 provisions of this chapter, the court rendering the ~~same~~ **judgment** shall  
35 also render judgment for reasonable attorney's fees in ~~such the~~ action  
36 in favor of the plaintiff and against the defendant, ~~therein~~, and when  
37 collected ~~such the~~ fees shall be paid to the attorney or the attorneys of  
38 the plaintiff ~~therein~~, ~~which~~ **and** if paid to the attorney general or to any  
39 prosecuting attorney shall be additional to any compensation otherwise  
40 allowed by law.

41 SECTION 45. IC 25-14-1-16, AS AMENDED BY P.L.46-2005,  
42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011]: Sec. 16. (a) An applicant for ~~examination~~ under this  
 2 article must submit to the board at ~~least forty-five (45) days before the~~  
 3 ~~examination date an application in a form and manner prescribed by~~  
 4 ~~the board and~~ proof satisfactory to the board that the applicant has not  
 5 been convicted of a crime that has a direct bearing on the applicant's  
 6 ability to practice competently. ~~An applicant must submit proof to the~~  
 7 ~~board at least seven (7) days before the examination date that the~~  
 8 ~~applicant is a graduate of a dental school that is recognized by the~~  
 9 ~~board.~~

10 (b) The board may issue a license upon payment of a fee, set by the  
 11 board under section 13 of this chapter, to an applicant who furnishes  
 12 proof satisfactory to the board that the applicant is a dentist who:

- 13 (1) is licensed in another state or a province of Canada that has  
 14 licensing requirements substantially equal to those in effect in  
 15 Indiana on the date of application;  
 16 (2) has practiced dentistry for at least two (2) of the three (3)  
 17 years preceding the date of application;  
 18 (3) passes the law examination administered by **the board or an**  
 19 **entity approved by** the board;  
 20 (4) has completed at ~~least twenty (20)~~ **the required** hours of  
 21 continuing education in the previous two (2) years; and  
 22 (5) meets all other requirements of this chapter.

23 (c) The board shall have power to adopt rules under section 13 of  
 24 this chapter for licensure by endorsement.

25 (d) An applicant shall, at the request of the board, make an  
 26 appearance before the board.

27 SECTION 46. IC 25-14-1-27.1 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 27.1. (a) The board  
 29 may classify a license as inactive if the board receives written  
 30 notification from a licensed dentist stating that the dentist will not  
 31 practice as a dentist in Indiana.

32 (b) The board may issue a license to the holder of an inactive license  
 33 under this section, if the applicant:

- 34 (1) pays the renewal fee set by the board;  
 35 (2) pays the reinstatement fee set by the board; ~~and~~  
 36 (3) meets continuing education requirements set by the board;  
 37 **and**  
 38 **(4) meets competency standards set by the board.**

39 (c) **The board may require a licensee whose license has been**  
 40 **inactive for more than three (3) years to participate in remediation**  
 41 **or pass an examination administered by an entity approved by the**  
 42 **board.**

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1 SECTION 47. IC 25-14-1-25 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 25. (a) It is a Class D  
3 felony for a person to do any of the following:

4 (1) Practice dentistry not being at the time a dentist duly licensed  
5 to practice as such in this state under this chapter.

6 (2) Employ, hire, or procure one who is not duly licensed as a  
7 dentist to practice dentistry, but a person practiced upon by an  
8 unlicensed dentist does not violate this section.

9 (b) It is a Class B misdemeanor for a person to do any of the  
10 following:

11 (1) Sell or barter, or offer to sell or barter, or, not being lawfully  
12 authorized so to do, issue or confer, or offer to issue or confer, any  
13 dental degree, license, or any diploma or document conferring, or  
14 purporting to confer, any dental degree or license, or any  
15 certificate or transcript made, or purporting to be made, under this  
16 chapter.

17 (2) Purchase, or procure by barter, any diploma, license,  
18 certificate, or transcript, with intent that it be used as evidence of  
19 the qualifications to practice dentistry of any person other than the  
20 one upon, or to whom, it was lawfully conferred or issued, or in  
21 fraud of the laws regulating the practice.

22 (3) Use any diploma, certificate, or transcript which has been  
23 purchased, fraudulently issued, counterfeited, or materially  
24 altered, either as a license or color of license, to practice dentistry,  
25 or in order to procure registration as a dentist.

26 (4) Practice dentistry under a false name, under a name intended  
27 to mislead the public, under the license of another person of the  
28 same name, or hold ~~himself~~ **the person** out to the public under  
29 such a name as a practitioner of dentistry.

30 (5) Assume the title or degree of "Bachelor of Dental Surgery",  
31 append the letters "B.D.S.", "D.D.S.", "M.D.S.", or "D.M.D.", to  
32 ~~his~~ **the person's** name, or make use of the same, or prefix to his  
33 name the title of "Doctor", or any abbreviation thereof, not having  
34 had duly conferred upon ~~him~~ **the person** by diploma from some  
35 college, school, or board of examiners legally empowered to  
36 confer the same, the right to assume such a title.

37 (6) Assume any title or append or prefix any words to ~~his~~ **the**  
38 **person's** name, with intent to represent falsely that ~~he~~ **the person**  
39 has received a dental degree or license.

40 (7) Not having been licensed to practice dentistry under the laws  
41 of this state, represent that ~~he~~ **the person** is entitled so to practice  
42 (a dental licensee may use the prefix "Doctor" or "Dr." to his

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1 name).

2 (8) Falsely personate another at any examination ~~held by the~~

3 ~~board~~ to ascertain the preliminary professional education of

4 candidates for dental certificates, dental degrees, or dental

5 licenses or knowingly avail ~~himself~~ **the person** of the benefit of

6 false personation.

7 ~~(9)~~ **(8)** Otherwise violate this chapter.

8 (c) Each date that a person violates this section constitutes a

9 separate offense.

10 SECTION 48. IC 25-14-1-27.5, AS AMENDED BY P.L.49-2008,

11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

12 JULY 1, 2011]: Sec. 27.5. (a) The board may issue an instructor's

13 license to an individual who is not otherwise licensed to practice

14 dentistry in Indiana if the individual meets the following conditions:

15 (1) The individual has been licensed or has had the equivalent of

16 a license for five (5) of the preceding nine (9) years to practice

17 dentistry in the United States or in any country, territory, or other

18 recognized jurisdiction.

19 (2) The individual has been approved under the credentialing

20 process of an Indiana school of dentistry or an affiliated medical

21 center of an Indiana school of dentistry that is accredited by:

22 (A) the American Dental Association Commission on Dental

23 Accreditation; or

24 (B) the Joint Commission on Accreditation of Health Care

25 Organizations.

26 (3) The individual has successfully documented or demonstrated

27 clinical and academic competency to the board.

28 (4) The individual is fluent in the English language.

29 (5) The individual passes the written law examination

30 administered by the board.

31 (6) The individual meets the continuing education requirements

32 required by IC 25-14-3.

33 (7) The individual pays the licensing fee set by the board under

34 subsection (f).

35 (b) A license issued under this section must be held by the Indiana

36 school of dentistry for which the licensee is employed.

37 (c) A license issued under this section does not meet the

38 requirements of section 16 of this chapter and may not be used to

39 obtain a general dentistry license under this article.

40 (d) A licensee under this section may teach and practice dentistry

41 only at or on behalf of an Indiana school of dentistry or an affiliated

42 medical center of an Indiana school of dentistry.

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1 (e) An instructor's license is valid only during the time the licensee  
2 is employed or has a valid employment contract for a full-time faculty  
3 position at the Indiana school of dentistry or an affiliated medical  
4 center. The Indiana school of dentistry or the affiliated medical center  
5 shall notify the board in writing upon the termination of the  
6 employment contract of an individual who is issued a license under this  
7 section and surrender the license not later than thirty (30) days after the  
8 licensee's employment ceases.

9 (f) The board shall set a fee for the issuance and renewal of a license  
10 under this section.

11 (g) Unless renewed, a license issued by the board under this section  
12 expires annually on a date specified by the agency under IC 25-1-5-4.  
13 An applicant for renewal must pay the renewal fee set by the board on  
14 or before the renewal date specified by the agency.

15 (h) Not more than ~~five ten~~ percent (~~5%~~) (**10%**) of the Indiana  
16 school of dentistry's full-time faculty may be individuals licensed under  
17 this section.

18 (i) The board shall adopt rules under IC 4-22-2 necessary to  
19 implement this section.

20 (j) ~~This section expires June 30, 2013.~~

21 SECTION 49. IC 25-14-1-30 IS ADDED TO THE INDIANA  
22 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
23 [EFFECTIVE JULY 1, 2011]: **Sec. 30. (a) An individual who:**

- 24 **(1) is licensed under; and**
- 25 **(2) fails to comply with;**
- 26 **this article or rules adopted under this article is subject to**
- 27 **discipline under IC 25-1-9.**

28 **(b) An individual who is licensed under this article is responsible**  
29 **for knowing the standards of conduct and practice established by**  
30 **this article and rules adopted under this article.**

31 SECTION 50. IC 25-14-3-8 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A dentist must  
33 complete at least twenty (20) credit hours in continuing education  
34 courses each license period. **At least half of the required minimum**  
35 **credit hours must be from live presentations or live workshops.**

36 (b) Credit hours may be applied under this section only toward the  
37 credit hour requirement for the license period during which the credit  
38 hours are earned.

39 (c) During a license period, a dentist may not earn more than five  
40 (5) credit hours toward the requirements under this section for  
41 continuing education courses that relate specifically to the area of  
42 practice management.

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1 SECTION 51. IC 25-22.5-2-5, AS AMENDED BY P.L.1-2006,  
 2 SECTION 446, IS AMENDED TO READ AS FOLLOWS  
 3 [EFFECTIVE JULY 1, 2011]: Sec. 5. **Except for a penalty under**  
 4 **section 8 of this chapter**, the funds obtained from registration and  
 5 penalty fees shall, upon receipt thereof, be accounted for and paid over  
 6 by the agency to the treasurer of state and be placed in the general fund  
 7 of the state. The expenses of the board shall be paid from the general  
 8 fund upon appropriation being made therefor in the manner required by  
 9 law for the making of such appropriations. The amount to be expended  
 10 by the board shall not exceed the amount collected by the board from  
 11 all sources.

12 SECTION 52. IC 25-22.5-2-8 IS ADDED TO THE INDIANA  
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 14 [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) The board shall implement**  
 15 **a program to investigate and assess a civil penalty of not more than**  
 16 **one thousand dollars (\$1,000) against a physician licensed under**  
 17 **this article for the following violations:**

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

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

36 (c) **In accordance with the federal Health Care Quality**  
 37 **Improvement Act (42 U.S.C. 11132), the board shall report a**  
 38 **disciplinary board action that is subject to reporting to the**  
 39 **National Practitioner Data Bank. However, the board may not**  
 40 **report board action against a physician for only an administrative**  
 41 **penalty described in subsection (a). The board's action concerning**  
 42 **disciplinary action or an administrative penalty described in**

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1 subsection (a) shall be conducted at a hearing that is open to the  
2 public.

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

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

13 SECTION 53. IC 25-35.6-1-8, AS AMENDED BY P.L.197-2007,  
14 SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2011]: Sec. 8. (a) The board shall adopt rules under IC 4-22-2  
16 to define the role of support personnel, including the following:

- 17 (1) Supervisory responsibilities of the speech-language
- 18 pathologist.
- 19 (2) Ratio of support personnel to speech-language pathologists.
- 20 (3) Scope of duties and restrictions of responsibilities for each
- 21 type of support personnel.
- 22 (4) Frequency, duration, and documentation of supervision.
- 23 (5) Education and training required to perform services.
- 24 (6) Procedures for renewing registration and terminating duties.

25 (b) A speech-language pathologist must meet the following  
26 qualifications to supervise speech-language pathology support  
27 personnel:

28 (1) Hold a current license as a speech-language pathologist issued  
29 by the board.

30 ~~(2) Have at least three (3) years of clinical experience.~~

31 ~~(3) (2) Except for an individual who:~~

32 (A) before September 1, 1990, completed all the course  
33 work and obtained all the experience required to receive a  
34 life license from the department of education; and

35 (B) was issued a life license by the department of  
36 education;

37 hold a certificate of clinical competence in speech-language  
38 pathology or its equivalent issued by a nationally recognized  
39 association for speech-language and hearing.

40 (c) Speech-language pathology support personnel may provide  
41 support services only under the supervision of a speech-language  
42 pathologist.

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1 SECTION 54. IC 27-4-1-4, AS AMENDED BY P.L.1-2009,  
2 SECTION 146, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The following are hereby  
4 defined as unfair methods of competition and unfair and deceptive acts  
5 and practices in the business of insurance:

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

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

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

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

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

20 (E) making any misrepresentation to any policyholder insured  
21 in any company for the purpose of inducing or tending to  
22 induce such policyholder to lapse, forfeit, or surrender the  
23 policyholder's insurance.

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

34 (3) Making, publishing, disseminating, or circulating, directly or  
35 indirectly, or aiding, abetting, or encouraging the making,  
36 publishing, disseminating, or circulating of any oral or written  
37 statement or any pamphlet, circular, article, or literature which is  
38 false, or maliciously critical of or derogatory to the financial  
39 condition of an insurer, and which is calculated to injure any  
40 person engaged in the business of insurance.

41 (4) Entering into any agreement to commit, or individually or by  
42 a concerted action committing any act of boycott, coercion, or

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1 intimidation resulting or tending to result in unreasonable  
 2 restraint of, or a monopoly in, the business of insurance.  
 3 (5) Filing with any supervisory or other public official, or making,  
 4 publishing, disseminating, circulating, or delivering to any person,  
 5 or placing before the public, or causing directly or indirectly, to  
 6 be made, published, disseminated, circulated, delivered to any  
 7 person, or placed before the public, any false statement of  
 8 financial condition of an insurer with intent to deceive. Making  
 9 any false entry in any book, report, or statement of any insurer  
 10 with intent to deceive any agent or examiner lawfully appointed  
 11 to examine into its condition or into any of its affairs, or any  
 12 public official to which such insurer is required by law to report,  
 13 or which has authority by law to examine into its condition or into  
 14 any of its affairs, or, with like intent, willfully omitting to make a  
 15 true entry of any material fact pertaining to the business of such  
 16 insurer in any book, report, or statement of such insurer.  
 17 (6) Issuing or delivering or permitting agents, officers, or  
 18 employees to issue or deliver, agency company stock or other  
 19 capital stock, or benefit certificates or shares in any common law  
 20 corporation, or securities or any special or advisory board  
 21 contracts or other contracts of any kind promising returns and  
 22 profits as an inducement to insurance.  
 23 (7) Making or permitting any of the following:  
 24 (A) Unfair discrimination between individuals of the same  
 25 class and equal expectation of life in the rates or assessments  
 26 charged for any contract of life insurance or of life annuity or  
 27 in the dividends or other benefits payable thereon, or in any  
 28 other of the terms and conditions of such contract. However,  
 29 in determining the class, consideration may be given to the  
 30 nature of the risk, plan of insurance, the actual or expected  
 31 expense of conducting the business, or any other relevant  
 32 factor.  
 33 (B) Unfair discrimination between individuals of the same  
 34 class involving essentially the same hazards in the amount of  
 35 premium, policy fees, assessments, or rates charged or made  
 36 for any policy or contract of accident or health insurance or in  
 37 the benefits payable thereunder, or in any of the terms or  
 38 conditions of such contract, or in any other manner whatever.  
 39 However, in determining the class, consideration may be given  
 40 to the nature of the risk, the plan of insurance, the actual or  
 41 expected expense of conducting the business, or any other  
 42 relevant factor.

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1 (C) Excessive or inadequate charges for premiums, policy  
 2 fees, assessments, or rates, or making or permitting any unfair  
 3 discrimination between persons of the same class involving  
 4 essentially the same hazards, in the amount of premiums,  
 5 policy fees, assessments, or rates charged or made for:  
 6 (i) policies or contracts of reinsurance or joint reinsurance,  
 7 or abstract and title insurance;  
 8 (ii) policies or contracts of insurance against loss or damage  
 9 to aircraft, or against liability arising out of the ownership,  
 10 maintenance, or use of any aircraft, or of vessels or craft,  
 11 their cargoes, marine builders' risks, marine protection and  
 12 indemnity, or other risks commonly insured under marine,  
 13 as distinguished from inland marine, insurance; or  
 14 (iii) policies or contracts of any other kind or kinds of  
 15 insurance whatsoever.

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

24 (8) Except as otherwise expressly provided by law, knowingly  
 25 permitting or offering to make or making any contract or policy  
 26 of insurance of any kind or kinds whatsoever, including but not in  
 27 limitation, life annuities, or agreement as to such contract or  
 28 policy other than as plainly expressed in such contract or policy  
 29 issued thereon, or paying or allowing, or giving or offering to pay,  
 30 allow, or give, directly or indirectly, as inducement to such  
 31 insurance, or annuity, any rebate of premiums payable on the  
 32 contract, or any special favor or advantage in the dividends,  
 33 savings, or other benefits thereon, or any valuable consideration  
 34 or inducement whatever not specified in the contract or policy; or  
 35 giving, or selling, or purchasing or offering to give, sell, or  
 36 purchase as inducement to such insurance or annuity or in  
 37 connection therewith, any stocks, bonds, or other securities of any  
 38 insurance company or other corporation, association, limited  
 39 liability company, or partnership, or any dividends, savings, or  
 40 profits accrued thereon, or anything of value whatsoever not  
 41 specified in the contract. Nothing in this subdivision and  
 42 subdivision (7) shall be construed as including within the

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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 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,

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1 participation as a member, director, or officer in the activities of  
 2 any nonprofit organization of insurance producers or other  
 3 workers in the insurance business shall not be interpreted, in  
 4 itself, to constitute a combination in restraint of trade or as  
 5 combining to create a monopoly as provided in this subdivision  
 6 and subdivision (10). The enumeration in this chapter of specific  
 7 unfair methods of competition and unfair or deceptive acts and  
 8 practices in the business of insurance is not exclusive or  
 9 restrictive or intended to limit the powers of the commissioner or  
 10 department or of any court of review under section 8 of this  
 11 chapter.

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

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

- 29 (A) Insurance issued to credit unions or members of credit  
 30 unions in connection with the purchase of shares in such credit  
 31 unions.
- 32 (B) Insurance employed as a means of guaranteeing the  
 33 performance of goods and designed to benefit the purchasers  
 34 or users of such goods.
- 35 (C) Title insurance.
- 36 (D) Insurance written in connection with an indebtedness and  
 37 intended as a means of repaying such indebtedness in the  
 38 event of the death or disability of the insured.
- 39 (E) Insurance provided by or through motorists service clubs  
 40 or associations.
- 41 (F) Insurance that is provided to the purchaser or holder of an  
 42 air transportation ticket and that:

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- 1 (i) insures against death or nonfatal injury that occurs during
- 2 the flight to which the ticket relates;
- 3 (ii) insures against personal injury or property damage that
- 4 occurs during travel to or from the airport in a common
- 5 carrier immediately before or after the flight;
- 6 (iii) insures against baggage loss during the flight to which
- 7 the ticket relates; or
- 8 (iv) insures against a flight cancellation to which the ticket
- 9 relates.
- 10 (14) Refusing, because of the for-profit status of a hospital or
- 11 medical facility, to make payments otherwise required to be made
- 12 under a contract or policy of insurance for charges incurred by an
- 13 insured in such a for-profit hospital or other for-profit medical
- 14 facility licensed by the state department of health.
- 15 (15) Refusing to insure an individual, refusing to continue to issue
- 16 insurance to an individual, limiting the amount, extent, or kind of
- 17 coverage available to an individual, or charging an individual a
- 18 different rate for the same coverage, solely because of that
- 19 individual's blindness or partial blindness, except where the
- 20 refusal, limitation, or rate differential is based on sound actuarial
- 21 principles or is related to actual or reasonably anticipated
- 22 experience.
- 23 (16) Committing or performing, with such frequency as to
- 24 indicate a general practice, unfair claim settlement practices (as
- 25 defined in section 4.5 of this chapter).
- 26 (17) Between policy renewal dates, unilaterally canceling an
- 27 individual's coverage under an individual or group health
- 28 insurance policy solely because of the individual's medical or
- 29 physical condition.
- 30 (18) Using a policy form or rider that would permit a cancellation
- 31 of coverage as described in subdivision (17).
- 32 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
- 33 concerning motor vehicle insurance rates.
- 34 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 35 to interest rate guarantees.
- 36 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 37 coverage for victims of abuse.
- 38 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 39 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
- 40 insurance producers.
- 41 (24) Violating IC 27-1-38 concerning depository institutions.
- 42 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning

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1 the resolution of an appealed grievance decision.  
 2 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired  
 3 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,  
 4 2007, and repealed).  
 5 (27) Violating IC 27-2-21 concerning use of credit information.  
 6 (28) Violating IC 27-4-9-3 concerning recommendations to  
 7 consumers.  
 8 (29) Engaging in dishonest or predatory insurance practices in  
 9 marketing or sales of insurance to members of the United States  
 10 Armed Forces as:  
 11 (A) described in the federal Military Personnel Financial  
 12 Services Protection Act, P.L.109-290; or  
 13 (B) defined in rules adopted under subsection (b).  
 14 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated  
 15 life insurance.  
 16 **(31) Violating IC 27-8-11-4.7 or IC 27-13-34-15.2 concerning**  
 17 **contracts for dental services.**  
 18 (b) Except with respect to federal insurance programs under  
 19 Subchapter III of Chapter 19 of Title 38 of the United States Code, the  
 20 commissioner may, consistent with the federal Military Personnel  
 21 Financial Services Protection Act (P.L.109-290), adopt rules under  
 22 IC 4-22-2 to:  
 23 (1) define; and  
 24 (2) while the members are on a United States military installation  
 25 or elsewhere in Indiana, protect members of the United States  
 26 Armed Forces from;  
 27 dishonest or predatory insurance practices.  
 28 SECTION 55. IC 27-7-3-15.5, AS AMENDED BY P.L.35-2010,  
 29 SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 UPON PASSAGE]: Sec. 15.5. (a) This section applies to ~~a transaction~~  
 31 ~~that:~~ **the following transactions:**  
 32 (1) ~~is a single family residential:~~ **A mortgage transaction (as**  
 33 **defined in IC 24-9-3-7(a)) that:**  
 34 (A) is:  
 35 (i) a first lien purchase money mortgage transaction; or  
 36 ~~(B) (ii) a refinancing transaction; and~~  
 37 ~~(2) (B) is closed by a closing agent after December 31, 2009.~~  
 38 **(2) A real estate transaction (as defined in IC 24-9-3-7(b))**  
 39 **that:**  
 40 **(A) does not involve a mortgage transaction described in**  
 41 **subdivision (1);**  
 42 **(B) is closed by a closing agent (as defined in**

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1 **IC 6-1.1-12-43(a)(2)) after December 31, 2011.**

2 (b) **For purposes of this subsection, a person described in this**  
 3 **subsection is involved in a transaction to which this section applies**  
 4 **if the person participates in or assists with, or will participate in or**  
 5 **assist with, a transaction to which this section applies.** ~~Not later than~~  
 6 ~~September 1, 2009,~~ The department shall establish and maintain an  
 7 electronic system for the collection and storage of the following  
 8 information, **to the extent applicable**, concerning ~~any of the following~~  
 9 ~~persons that have participated in or assisted with a transaction to which~~  
 10 ~~this section applies, or that will participate in or assist with a~~  
 11 ~~transaction to which this section applies:~~

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

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

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

22 (B) involved in the transaction.

23 (3) The name and license number (under IC 25-34.1) of each:

24 (A) principal broker; and

25 (B) salesperson or broker-salesperson, if any;  
 26 involved in the transaction.

27 (4) **The following information:**

28 (A) **The:**

29 (i) name of; and

30 ~~(B)~~ (ii) code assigned by the National Association of  
 31 Insurance Commissioners (NAIC) to;

32 each title insurance underwriter involved in the transaction.

33 **(B) The type of title insurance policy issued in connection**  
 34 **with the transaction.**

35 (5) The name and license number (under IC 27-1-15.6) of each  
 36 title insurance agency and agent involved in the transaction as a  
 37 closing agent (as defined in IC 6-1.1-12-43(a)(2)).

38 (6) **The following information:**

39 (A) **The name and:**

40 ~~(A)~~ (i) license or certificate number (under IC 25-34.1-3-8)  
 41 of each licensed or certified real estate appraiser; or

42 ~~(B)~~ (ii) license number (under IC 25-34.1) of each broker;

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who appraises the property that is the subject of the transaction.

**(B) The name and registration number (under IC 25-34.1-11-10) of any appraisal management company that performs appraisal management services (as defined in IC 25-34.1-11-3) in connection with the transaction.**

**(7) In the case of a transaction described in subsection (a)(1),** the name of the ~~mortgagee~~ **creditor** and, if the ~~mortgagee~~ **creditor** is required to be licensed under IC 24-4.4, the license number of the ~~mortgagee~~ **creditor**.

**(8) In the case of a first lien purchase money mortgage transaction described in subsection (a)(1)(A)(i) or (a)(2),** the name of the seller of the property that is the subject of the transaction.

**(9) In the case of a first lien purchase money mortgage transaction described in subsection (a)(1)(A)(i), 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.**

**(C) The loan amount of the mortgage transaction.**

**(10) In the case of a transaction described in subsection (a)(2), 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:**

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- 1 (A) Input information identifying the property that is the  
 2 subject of the transaction by lot or parcel number, street  
 3 address, or some other means of identification that the  
 4 department determines:  
 5 (i) is sufficient to identify the property; and  
 6 (ii) is determinable by the closing agent.  
 7 (B) Subject to subsection (d) and to the extent determinable,  
 8 input the **applicable** information described in subsection (b).  
 9 ~~with respect to each person described in subsection (b) that~~  
 10 ~~participates in or assists with the transaction.~~  
 11 (C) Respond to the following questions, **if applicable**:  
 12 (i) "On what date did you receive the closing instructions  
 13 from the creditor in the transaction?"  
 14 (ii) "On what date did the transaction close?"  
 15 (D) Submit the form electronically to a data base maintained  
 16 by the department.  
 17 (d) Not later than the time of the closing, each person described in  
 18 subsection (b), other than a person described in subsection (b)(8), ~~or~~  
 19 ~~(b)(9), (b)(10), or (b)(11)~~, shall provide to the closing agent in the  
 20 transaction the person's:  
 21 (1) legal name; and  
 22 (2) license number, certificate number, registration number, or  
 23 NAIC code, as appropriate;  
 24 to allow the closing agent to comply with subsection (c)(2)(B). ~~★ In~~  
 25 ~~the case of a transaction described in subsection (a)(1), the person~~  
 26 ~~described in subsection (b)(7) shall, with the cooperation of any~~  
 27 ~~person involved in the transaction and described in subsection~~  
 28 ~~(b)(6)(A) or (b)(6)(B), provide the information required by this~~  
 29 ~~subsection for any person described in subsection (b)(6). that appraises~~  
 30 ~~the property that is the subject of the transaction on behalf of the~~  
 31 ~~person described in subsection (b)(7): In the case of a transaction~~  
 32 ~~described in subsection (a)(1)(A)(ii), the person described in~~  
 33 ~~subsection (b)(7) shall also provide the information described in~~  
 34 ~~subsection (b)(11). A person described in subsection (b)(3)(B) who is~~  
 35 ~~involved in the transaction may provide the information required by~~  
 36 ~~this subsection for a person described in subsection (b)(3)(A) that~~  
 37 ~~serves as the principal broker for the person described in subsection~~  
 38 ~~(b)(3)(B). In the case of a first lien purchase money mortgage~~  
 39 ~~transaction, The closing agent shall determine the information~~  
 40 ~~described in subsection (b)(8), and (b)(9), and (b)(10) from the HUD-1~~  
 41 ~~settlement statement, or in the case of a transaction described in~~  
 42 ~~subsection (a)(2), from the contract or any other document~~

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1 **executed by the parties in connection with the transaction.**

2 (e) Except for a person described in subsection (b)(8), or (b)(9),  
3 **(b)(10), or (b)(11)**, a person described in subsection (b) who fails to  
4 comply with subsection (d) is subject to a civil penalty of one hundred  
5 dollars (\$100) for each closing with respect to which the person fails  
6 to comply with subsection (d). The penalty:

7 (1) may be enforced by the state agency that has administrative  
8 jurisdiction over the person in the same manner that the agency  
9 enforces the payment of fees or other penalties payable to the  
10 agency; and

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

13 (f) Subject to subsection (g), the department shall make the  
14 information stored in the data base described in subsection (c)(2)(D)  
15 accessible to:

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

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

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

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

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

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

30 (1) establish;

31 (2) collect; and

32 (3) change as necessary;

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

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

39 (1) require the fee to be paid:

40 (A) to the closing agent responsible for inputting the  
41 information and submitting the form described in subsection

42 (c)(2); and

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- 1 (B) by the borrower, **the seller, or the buyer** in the
- 2 transaction;
- 3 (2) allow the closing agent described in subdivision (1)(A) to
- 4 retain a part of the fee collected to cover the closing agent's costs
- 5 in inputting the information and submitting the form described in
- 6 subsection (c)(2); and
- 7 (3) require the closing agent to pay the remainder of the fee
- 8 collected to the department for deposit in the title insurance
- 9 enforcement fund established by IC 27-7-3.6-1, for the
- 10 department's use in establishing and maintaining the electronic
- 11 system required by this section.

12 SECTION 56. IC 27-8-11-4.7 IS ADDED TO THE INDIANA  
 13 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
 14 [EFFECTIVE JULY 1, 2011]: **Sec. 4.7. (a) As used in this section,**  
 15 **"covered services" means health care services for which any**  
 16 **reimbursement is available under an insured's policy, regardless**  
 17 **of whether the actual reimbursement is contractually limited by a**  
 18 **deductible, copayment, coinsurance, waiting period, annual or**  
 19 **lifetime maximum, frequency limitation, alternative benefit**  
 20 **payment, or any other limitation.**

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

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

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

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

33 SECTION 57. IC 27-13-34-15.2 IS ADDED TO THE INDIANA  
 34 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
 35 [EFFECTIVE JULY 1, 2011]: **Sec. 15.2. (a) As used in this section,**  
 36 **"covered services" means limited health services for which any**  
 37 **coverage is available under an enrollee's individual contract or**  
 38 **group contract, regardless of whether the actual coverage is**  
 39 **contractually limited by a deductible, copayment, coinsurance,**  
 40 **waiting period, annual or lifetime maximum, frequency limitation,**  
 41 **alternative benefit payment, or any other limitation.**

42 (b) **A limited service health maintenance organization may not,**

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1 under a contract described in section 15 of this chapter, require a  
2 dentist to accept an amount set by the limited service health  
3 maintenance organization as payment for limited health services  
4 provided to an enrollee unless the limited health services are  
5 covered services under the enrollee's individual contract or group  
6 contract.

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

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

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

14 SECTION 58. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)] (a)  
15 Notwithstanding IC 25-35.6-1-8(b)(3), before amendment by this  
16 act on July 1, 2011, a speech-language pathologist is not required  
17 to hold a certificate of clinical competence in speech-language  
18 pathology or its equivalent issued by a nationally recognized  
19 association for speech-language and hearing to supervise  
20 speech-language pathology support personnel.

21 (b) This SECTION expires July 1, 2013.

22 SECTION 59. [EFFECTIVE JULY 1, 2011] (a) The Indiana  
23 professional licensing agency shall issue a license in  
24 speech-language pathology as follows:

25 (1) To each individual who applies for licensure and meets the  
26 following qualifications:

27 (A) Holds a license in speech and hearing therapy issued by  
28 the department of education.

29 (B) Has a master's degree in speech-language pathology or  
30 a related discipline.

31 (C) Has been employed as a speech-language pathologist  
32 for at least nine (9) months in the last five (5) years.

33 (2) To each individual who applies for licensure and meets all  
34 of the following qualifications:

35 (A) Holds a license in speech-language pathology issued by  
36 the department of education.

37 (B) Has:  
38 (i) been employed as a speech-language pathologist for at  
39 least nine (9) months in the last five (5) years; or  
40 (ii) taken at least thirty-six (36) hours of continuing  
41 education approved by the department of education or  
42 the health professions bureau after December 31, 2007,

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1                   **and before January 1, 2013.**  
2                   **(b) This SECTION expires July 1, 2013.**  
3                   SECTION 60. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)] **(a)**  
4                   **880 IAC 1-2.1-9(i) is void.**  
5                   **(b) The publisher of the Indiana Administrative Code and**  
6                   **Indiana Register shall remove 880 IAC 1-2.1-9(i) from the Indiana**  
7                   **Administrative Code.**  
8                   **(c) This SECTION expires January 1, 2012.**  
9                   SECTION 61. **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.

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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

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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

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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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SENATE MOTION

Madam President: I move that Engrossed House Bill 1273 be amended to read as follows:

Page 14, line 23, after "error." insert "**A person may not be held liable in any action for a violation of this chapter for contacting a person other than the debtor, provided such contact is made in compliance with the Fair Debt Collection Practices Act.**".

(Reference is to EHB 1273 as printed April 1, 2011.)

ZAKAS

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1273 be amended to read as follows:

Page 4, line 42, delete "collector (as defined in 15 U.S.C. 1692a(6))." and insert "**collector.**".

Page 6, between lines 32 and 33, begin a new line block indented and insert:

**"(15) "Debt collector" has the meaning set forth in 15 U.S.C. 1692a(6). The term does not include a person admitted to the**

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**practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney."**

(Reference is to EHB 1273 as printed April 1, 2011.)

STEELE

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1273 be amended to read as follows:

Page 16, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 17. IC 25-13-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) Any person desiring to practice dental hygiene in Indiana must procure from the board a license to practice dental hygiene. To procure a license, the applicant must submit to the board proof of graduation from an institution for educating dental hygienists that is approved by the board and other credentials required by this chapter, together with an application on forms prescribed and furnished by the board. Each applicant must pay to the board an application fee set by the board under section 5 of this chapter at the time the application is made and must pass an examination **satisfactory to administered by an entity approved by** the board. For those applicants who fail to pass an initial examination, subsequent examinations may be had before the board upon payment of a fee set by the board under section 5 of this chapter for each subsequent examination. The board may establish under section 5 of this chapter additional requirements as a prerequisite to taking an examination for any applicant who has failed the examination two (2) or more times. Application fees are not refundable.

(b) An applicant described under subsection (a) shall, at the request of the board, make an appearance before the board.

SECTION 18. IC 25-13-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. ~~When applying to the board for examination, the applicant must submit an application and the applicant's credentials, except for proof of the applicant's graduation from an institution for educating dental hygienists, in the form and manner prescribed by the board at least forty-five (45) days prior to the examination date. The applicant must submit proof of the applicant's graduation at least seven (7) days before the examination date. The An applicant:~~

(1) must not have been convicted of a crime that has a direct

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- bearing on the applicant's ability to practice competently; ~~and~~
- (2) must be a graduate of a school for dental hygienists that:
- (A) is accredited by the Commission on Dental Accreditation of the American Dental Association;
  - (B) is recognized by the board; and
  - (C) requires a formal course of training of not less than two (2) years of eight (8) months each;
- (3) must pass an examination administered by an entity approved by the board; and**
- (4) may not take any part of the examination described in subdivision (3) more than three (3) times.**

SECTION 19. IC 25-13-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. ~~The board's examination of applicants to practice dental hygiene shall be held at such time and place as may be called by the board for its examination of applicants for dental license. The dental hygienist examination shall include a practical clinical test, the applicant supplying the patient and necessary instruments and equipment, and such written or oral examination (or both) embracing the subjects taught in dental hygienist's schools as the board may require. The board may recognize licenses issued by other states as provided in section 17 of this chapter, and may recognize the examination of the national board of dental examiners, if it is consistent with the board's requirements.~~

SECTION 20. IC 25-13-1-8, AS AMENDED BY P.L.105-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A license to practice dental hygiene in Indiana ~~shall~~ **may** be issued to candidates who pass ~~the board's examinations: an examination administered by an entity that has been approved by the board.~~ The license shall be valid for the remainder of the renewal period in effect on the date the license was issued.

(b) Prior to the issuance of the license, the applicant shall pay a fee set by the board under section 5 of this chapter. A license issued by the board expires on a date specified by the Indiana professional licensing agency under IC 25-1-5-4(k) of each even-numbered year.

(c) An applicant for license renewal must satisfy the following conditions:

- (1) Pay the renewal fee set by the board under section 5 of this chapter on or before the renewal date specified by the Indiana professional licensing agency in each even-numbered year.
- (2) Subject to IC 25-1-4-3, provide the board with a sworn statement signed by the applicant attesting that the applicant has

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fulfilled the continuing education requirements under IC 25-13-2.

(3) Be currently certified or successfully complete a course in basic life support through a program approved by the board. The board may waive the basic life support requirement for applicants who show reasonable cause.

(d) If the holder of a license does not renew the license on or before the renewal date specified by the Indiana professional licensing agency, the license expires and becomes invalid without any action by the board.

(e) A license invalidated under subsection (d) may be reinstated by the board in three (3) years or less after such invalidation if the holder of the license meets the requirements under IC 25-1-8-6(c).

(f) If a license remains invalid under subsection (d) for more than three (3) years, the holder of the invalid license may obtain a reinstated license by meeting the requirements for reinstatement under IC 25-1-8-6(d). **The board may require the licensee to participate in remediation or pass an examination administered by an entity approved by the board.**

(g) The board may require the holder of an invalid license who files an application under this subsection to appear before the board and explain why the holder failed to renew the license.

(h) The board may adopt rules under section 5 of this chapter establishing requirements for the reinstatement of a license that has been invalidated for more than three (3) years.

(i) The license to practice must be displayed at all times in plain view of the patients in the office where the holder is engaged in practice. No person may lawfully practice dental hygiene who does not possess a license and its current renewal.

(j) Biennial renewals of licenses are subject to the provisions of IC 25-1-2.

SECTION 21. IC 25-13-1-10.5, AS ADDED BY P.L.121-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10.5. A student pursuing a course of study in dental hygiene may administer dental anesthetics during an educational course on the practice of dental anesthetics if the course is:

- (1) supervised by a dentist **licensed under IC 25-14** and trained in the administration of dental anesthetics; and
- (2) conducted at a school described in section 6(2) of this chapter.

SECTION 22. IC 25-13-1-10.6, AS ADDED BY P.L.134-2008, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10.6. (a) A licensed dental hygienist may administer local dental anesthetics under the direct supervision of a

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licensed dentist **under IC 25-14** if the dental hygienist has:

- (1) completed board approved educational requirements, including cardiopulmonary resuscitation and emergency care training; and
- (2) received a board issued dental hygiene anesthetic permit.

(b) Local dental anesthetics do not include nitrous oxide or similar ~~anesthetics.~~ **analgesics.**

SECTION 23. IC 25-13-1-17.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17.2. (a) The board may classify a license as inactive if the board receives written notification from the dental hygienist that the dental hygienist will not practice as a dental hygienist in Indiana.

(b) The board may issue a license to the holder of an inactive license under this section if the applicant:

- (1) pays the renewal fee set by the board;
- (2) pays the reinstatement fee set by the board; ~~and~~
- (3) meets the continuing education requirements set by the board; **and**
- (4) **meets competency standards set by the board.**

(c) **The board may require a licensee whose license has been inactive for more than three (3) years to participate in remediation or pass an examination administered by an entity approved by the board.**

SECTION 24. IC 25-13-1-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 20. (a) **An individual who:**

- (1) **is licensed under; and**
- (2) **fails to comply with;**

**this article or rules adopted under this article is subject to discipline under IC 25-1-9.**

(b) **An individual who is licensed under this article is responsible for knowing the standards of conduct and practice established by this article and rules adopted under this article.**

SECTION 25. IC 25-13-2-6, AS AMENDED BY P.L.105-2008, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) A dental hygienist must complete at least fourteen (14) credit hours in continuing education courses each license period.

(b) Credit hours may be applied under this section only toward the credit hour requirement for the license period during which the credit hours are earned.

(c) During a license period, a dental hygienist may not earn more

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than five (5) credit hours toward the requirements under this section for continuing education courses that relate specifically to the area of practice management.

(d) Not more than two (2) credit hours for certification programs in basic life support required under IC 25-13-1-8(c)(3) may be applied toward the credit hour requirement during each license period.

**(e) During a license period, at least half of the required minimum credit hours must be earned through live presentations or live workshops.**

SECTION 26. IC 25-13-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) A member of the board may attend or monitor a continuing education course.

(b) An approved organization must provide the board with course information or materials requested by the board.

(c) If the board determines that an approved organization does not meet the requirements of this chapter, the board shall do the following:

(1) Provide written notification to the organization of the noncompliance specifying the items of noncompliance and the conditions of reinstatement.

(2) Deny credit hours awarded by the organization from the time that the organization receives a notice until the date of reinstatement.

~~(3) Make reasonable efforts to notify dental hygienists of the organization's noncompliance status.~~

(d) The board shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 27. IC 25-14-1-1.5 AS AMENDED BY P.L.134-2008, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.5. ~~As used in~~ **The following definitions apply throughout** this article:

(1) "Agency" refers to the Indiana professional licensing agency established by IC 25-1-5-3.

(2) "Board" refers to the state board of dentistry established under this chapter.

(3) "Deep sedation" means a ~~controlled state of depressed drug induced depression of~~ consciousness accompanied by partial loss of protective reflexes; including inability to respond purposefully to verbal command; produced by a pharmacologic method; **during which cardiovascular function is usually maintained and the individual may:**

**(A) not be easily aroused;**

**(B) be able to respond purposefully following repeated or**

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**painful stimulation;**

**(C) have an impaired ability to independently maintain ventilatory function;**

**(D) require assistance in maintaining a patent airway; and**

**(E) have inadequate spontaneous ventilation.**

**(4) "Dental assistant"** means a qualified dental staff member, other than a licensed dental hygienist, who assists a licensed dentist with patient care while working under the dentist's direct supervision.

**(5) "Direct supervision"** means that a licensed dentist is physically present in the facility when patient care is provided by the dental assistant.

**(6) "Enteral route of administration"** means a technique of administering an agent so that it is absorbed through the gastrointestinal tract or oral mucosa.

**(7) "General anesthesia"** means a controlled state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command; produced by a pharmacologic method: **drug induced loss of consciousness during which cardiovascular function may be impaired and the individual:**

**(A) is not arousable, even by painful stimulation;**

**(B) often has an impaired ability to independently maintain ventilatory function;**

**(C) often requires assistance in maintaining a patent airway; and**

**(D) may require positive pressure ventilation because of depressed spontaneous ventilation or drug induced depression of neuromuscular function.**

**(8) "Light parenteral conscious sedation"** means a minimally depressed level of consciousness under which an individual retains the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command; produced by an intravenous pharmacologic method. **"Moderate sedation"** means a drug induced depression of consciousness during which cardiovascular function is usually maintained and the individual:

**(A) responds purposefully to verbal commands, either alone or with light tactile stimulation;**

**(B) does not require intervention to maintain a patent airway; and**

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**(C) has adequate spontaneous ventilation.**

**(9) "Parenteral route of administration" means a technique of administering an agent by intravenous or intramuscular injection so that it bypasses the gastrointestinal tract.**

SECTION 28. IC 25-14-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The state board of dentistry is established and consists of:

(1) nine (9) practicing dentists **licensed under IC 25-14** who must have been in practice in **this state Indiana** for not less than the five (5) years;

(2) one (1) practicing dental hygienist **who:**

**(A) has been practicing in Indiana as a dental hygienist:**

**(i) in 2011 and 2012, for at least three (3) years; and**

**(ii) after 2012, for at least five (5) years; and**

**(B) is licensed under IC 25-13-1; and**

(3) one (1) member to represent the general public who must be a resident to this state and in no way associated with the profession of dentistry other than as a consumer.

All eleven (11) members of the board shall be appointed by the governor for a term of three (3) years each. Any member of the board may serve until the member's successor is appointed and qualified under this chapter. A member may serve consecutive terms, but no member may serve more than three (3) terms or a total of nine (9) years.

(b) The appointment of the dentist members shall be made in a manner that, at all times, each dentist member on the board represents and is a resident of one (1) of nine (9) examiner districts set forth in this subsection. Each dentist member shall be chiefly responsible in the performance of his or her duties with regard to the district from which he or she is appointed. The nine (9) dentist members' districts consist of the following counties:

(1) District 1. Tipton, Hamilton, Hendricks, Marion, Hancock, Morgan, Johnson, and Shelby.

(2) District 2. Lake, Porter, LaPorte, and Jasper.

(3) District 3. St. Joseph, Elkhart, Starke, Marshall, Kosciusko, and Fulton.

(4) District 4. LaGrange, Steuben, Jay, Noble, Whitley, Allen, Huntington, Wells, DeKalb, and Adams.

(5) District 5. Knox, Daviess, Gibson, Pike, Dubois, Posey, Vanderburgh, Warrick, Spencer, and Perry.

(6) District 6. Newton, Benton, White, Pulaski, Cass, Miami, Wabash, Grant, Howard, Carroll, Warren, Tippecanoe, and

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Clinton.

(7) District 7. Vermillion, Parke, Fountain, Montgomery, Boone, Putnam, Vigo, Clay, Sullivan, Owen, Greene, and Martin.

(8) District 8. Madison, Delaware, Blackford, Randolph, Rush, Fayette, Union, Henry, and Wayne.

(9) District 9. Monroe, Brown, Bartholomew, Decatur, Franklin, Lawrence, Jackson, Jennings, Ripley, Dearborn, Orange, Washington, Scott, Jefferson, Switzerland, Ohio, Crawford, Harrison, Floyd, and Clark.

(c) The board shall examine all applicants for licenses who present the credentials set forth in this article and may issue licenses to all applicants who pass a satisfactory examination administered by an entity that has been approved by the board.

SECTION 29. IC 25-14-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) A person desiring to begin the practice of dentistry in Indiana shall procure from the board a license to practice dentistry in Indiana. To procure the license, the applicant must submit to the board proof of graduation from a dental college recognized by the board. The board may recognize dental schools accredited by the Commission on Dental Accreditation of the American Dental Association, if the board is satisfied that the recognition is consistent with the board's requirements. Every applicant shall pay to the board a fee, set by the board under section 13 of this chapter, at the time of making the application and must pass an examination before the board at the time and place to be fixed by the board administered by an entity approved by the board and may not take any portion of the examination more than three (3) times. The applicant must purchase examination supplies and pay a fee for the use of the examination facility.

(b) For those applicants who fail to pass an initial examination subsequent examinations may be taken upon payment of a fee, set by the board under section 13 of this chapter, for each subsequent examination; if the applicant fails to pass the examination prescribed by the board, the applicant is entitled to the right of review of the board's action on the examination under IC 4-21.5. The board may establish, under section 13 of this chapter, additional requirements as a prerequisite to taking an examination for an applicant who has failed the examination two (2) or more times.

(c) (b) A fee paid under this article may not be refunded.

SECTION 30. IC 25-14-1-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.1. (a) A dentist must have a permit to administer:

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- (1) general ~~anesthesia~~; **anesthesia/deep sedation; or**
  - (2) ~~deep moderate~~ **sedation using a parenteral route of administration; or**
  - (3) ~~light parenteral conscious sedation;~~
- to a patient.

(b) The board shall establish by rule the educational and training requirements for the issuance and renewal of a permit required by subsection (a).

(c) The board shall establish the requirements for a program of education and training for pediatric anesthesiology.

(d) The requirements for a permit issued under this section must be based on the **current** American Dental Association's "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" ~~and accompanying policy statement adopted in November 1985~~. **Pain Control and Sedation to Dentists and Dental Students", as adopted by the American Dental Association House of Delegates.**

(e) A permit issued under this section must be renewed biennially.

SECTION 31. IC 25-14-1-3.5, AS AMENDED BY P.L.1-2006, SECTION 431, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.5. (a) Under IC 25-1-8 the board shall establish, under IC 25-13-1-5 and section 13 of this chapter, fees sufficient to implement IC 25-13 and IC 25-14.

(b) **Except for the fee collected in subsection (c)**, all money received by the board under this chapter shall be paid to the agency, which shall:

- (1) give a proper receipt for the same; and
- (2) at the end of each month:
  - (A) report to the auditor of state the total amount received from all sources; and
  - (B) deposit the entire amount of such receipts with the state treasurer to be deposited by the treasurer in the general fund of the state.

**Except as provided in subsection (c) and section 3.7 of this chapter**, all expenses incurred in the administration of this chapter shall be paid from the general fund upon appropriation being made therefor in the manner provided by law for making such appropriations.

(c) **In addition to the fee to issue or renew a license, the board shall establish a fee of twenty dollars (\$20) to be paid when an individual applies for the issuance or renewal of a license under:**

- (1) IC 25-13; or
- (2) this article;

**to provide funds for administering and enforcing the provisions of**

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**IC 25-13 and this article, including investigating and taking action against individuals who violate IC 25-13 or this article. All funds collected under this subsection shall be deposited into the dental compliance fund established by section 3.7 of this chapter.**

**SECTION 32. IC 25-14-1-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.7. (a) The dental compliance fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against violators of:**

- (1) IC 25-1-9 concerning an individual licensed under IC 25-13 or this article;**
- (2) IC 25-13; and**
- (3) this article.**

**The fund shall be administered by the Indiana professional licensing agency.**

**(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of:**

- (1) proceeds of the fee collected under section 3.5(c) of this chapter; and**
- (2) fines and civil penalties collected through investigations of violations of:**
  - (A) IC 25-1-9 concerning individuals licensed under IC 25-13 or this article;**
  - (B) IC 25-13; and**
  - (C) this article;**

**conducted by the board or the attorney general.**

**(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.**

**(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.**

**(e) The attorney general and the Indiana professional licensing agency may enter into a memorandum of understanding to provide the attorney general with funds to conduct investigations and pursue enforcement action against violators of:**

- (1) IC 25-1-9 if the individual is licensed under IC 25-13 or this article;**
- (2) IC 25-13; and**
- (3) this article.**

**(f) The attorney general and the Indiana professional licensing agency shall present any memorandum of understanding under**

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**subsection (e) annually to the board for review.**

SECTION 33. IC 25-14-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The board may at its discretion issue a ~~dental intern~~ **limited dental residency permit** or dental hygienist intern permit to a school for use by any person **student or former student** to whom it has not issued a license but who is **attending or is** a graduate of a dental college or school of dental hygiene recognized by the board and is ~~otherwise qualified to take the regular examination for a license given by the board.~~ **completing a residency program.** However, an applicant ~~the school~~ for a dental intern permit or dental hygienist intern permit shall furnish the board **with** satisfactory evidence that the ~~applicant has been:~~

- (1) appointed to a dental or a dental hygiene internship in a hospital or similar institution operated under the laws of Indiana; or
- (2) employed as:
  - (A) an instructor in a dental school recognized and approved by the Indiana dental board; or
  - (B) a teacher or operator in a clinic in a public or parochial school; college; or university.

**student or former student is enrolled in an accredited dental residency or fellowship program and is using the permit only for school purposes. The school shall maintain the permit at the school.**

(b) The fee for the permit shall be set by the board under section 13 of this chapter.

(c) Any person ~~receiving~~ **using a school's limited dental residency or dental hygienist intern permit** may practice dentistry or dental hygiene only in a hospital or other **board approved** institution designated in the permit and only under the direction of a licensed dentist who is a member of the dental staff of ~~such the~~ hospital or other institution. The ~~intern's~~ dental or dental hygiene practice shall be limited to bona fide patients of ~~such the~~ hospital or other institution.

(d) The permit:

- (1) shall be:
  - (A) valid for only one (1) year from date of issue; **and shall be**
  - (B) renewable in the discretion of the board upon the payment of a fee determined by the board under section 13 of this chapter; and
- (2) may be recalled at any time by the board.

SECTION 34. IC 25-14-1-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. (a) The board may issue a**

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**limited dental faculty permit. An applicant for a permit under this section must meet the following requirements:**

**(1) Be a graduate of an American Dental Association accredited dental program, as determined by the board.**

**(2) Be employed by an accredited dental school.**

**(b) An individual granted a limited dental faculty permit under this section:**

**(1) may use the permit to practice only at the school where the individual is employed and as a part of the individual's research or teaching responsibilities; and**

**(2) may not use the permit to obtain:**

**(A) a license under section 3 of this chapter; or**

**(B) reciprocity or endorsement under this article.**

**(c) The board shall set the permit fee under section 13 of this chapter.**

SECTION 35. IC 25-14-1-12, AS AMENDED BY P.L.1-2006, SECTION 433, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) The board shall hold not less than two (2) regular meetings in each year at such place as may be fixed by the board and as often in addition as may be necessary for the transaction of such business as may properly come under the provisions of this chapter, and it shall have power to make all necessary rules in accordance with this chapter. Additional meetings may be called at any time by the president or any six (6) members of the board to be held at such time and place as may be designated in the call. Six (6) members of the board constitute a quorum. A majority of the quorum may transact business. The board shall elect a president and a secretary. For their services, the members shall receive per diem and travel expenses as otherwise provided by law.

(b) It shall be the duty of the board through the agency to keep a record of all applications for licenses for a period of time designated by the board, subject to the final approval of the oversight committee on public records under IC 5-15-5.1-19. Such records shall contain all the facts set forth in the application, including the action of the board. ~~The board shall also retain all examination papers for a period of one (1) year from the date upon which the examination is held.~~ The agency shall carry out the administrative functions of the board and shall provide necessary personnel to enable the board to properly carry out and enforce this chapter.

(c) The board may affiliate with the American Association of Dental ~~Examiners~~ **Boards** as an active member thereof and may pay the regular annual dues of the association out of any available funds of the

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board, which are obtained by examination fees or registration renewal fees as provided by law. However, the affiliation with the American Association of Dental **Examiners Boards** shall not impair, restrict, enlarge, or modify any of the rights, powers, duties, or functions of the board as prescribed by the laws of this state. The board may designate one (1) of its members as a delegate of any meeting of the association, and such delegate member shall receive the regular per diem paid to members of the board for their services on the board and the member's necessary expenses while traveling to and from and attending such meetings.

SECTION 36. IC 25-14-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. ~~In case~~ **If** judgment is rendered in favor of the plaintiff in any action brought under the provisions of this chapter, the court rendering the ~~same~~ **judgment** shall also render judgment for reasonable attorney's fees in ~~such the~~ action in favor of the plaintiff and against the defendant, ~~therein~~, and when collected ~~such the~~ fees shall be paid to the attorney or the attorneys of the plaintiff ~~therein~~, ~~which and~~ if paid to the attorney general or to any prosecuting attorney shall be additional to any compensation otherwise allowed by law.

SECTION 37. IC 25-14-1-16, AS AMENDED BY P.L.46-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 16. (a) An applicant ~~for examination~~ under this article must submit to the board at ~~least forty-five (45) days before the examination date~~ an application in a form and manner prescribed by ~~the board and~~ proof satisfactory to the board that the applicant has not been convicted of a crime that has a direct bearing on the applicant's ability to practice competently. ~~An applicant must submit proof to the board at least seven (7) days before the examination date that the applicant is a graduate of a dental school that is recognized by the board.~~

(b) The board may issue a license upon payment of a fee, set by the board under section 13 of this chapter, to an applicant who furnishes proof satisfactory to the board that the applicant is a dentist who:

- (1) is licensed in another state or a province of Canada that has licensing requirements substantially equal to those in effect in Indiana on the date of application;
- (2) has practiced dentistry for at least two (2) of the three (3) years preceding the date of application;
- (3) passes the law examination administered by **the board or an entity approved by** the board;
- (4) has completed ~~at least twenty (20)~~ **the required** hours of

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continuing education in the previous two (2) years; and  
(5) meets all other requirements of this chapter.

(c) The board shall have power to adopt rules under section 13 of this chapter for licensure by endorsement.

(d) An applicant shall, at the request of the board, make an appearance before the board.

SECTION 38. IC 25-14-1-27.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 27.1. (a) The board may classify a license as inactive if the board receives written notification from a licensed dentist stating that the dentist will not practice as a dentist in Indiana.

(b) The board may issue a license to the holder of an inactive license under this section, if the applicant:

- (1) pays the renewal fee set by the board;
- (2) pays the reinstatement fee set by the board; ~~and~~
- (3) meets continuing education requirements set by the board; **and**
- (4) meets competency standards set by the board.**

**(c) The board may require a licensee whose license has been inactive for more than three (3) years to participate in remediation or pass an examination administered by an entity approved by the board.**

SECTION 39. IC 25-14-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 25. (a) It is a Class D felony for a person to do any of the following:

- (1) Practice dentistry not being at the time a dentist duly licensed to practice as such in this state under this chapter.
- (2) Employ, hire, or procure one who is not duly licensed as a dentist to practice dentistry, but a person practiced upon by an unlicensed dentist does not violate this section.

(b) It is a Class B misdemeanor for a person to do any of the following:

- (1) Sell or barter, or offer to sell or barter, or, not being lawfully authorized so to do, issue or confer, or offer to issue or confer, any dental degree, license, or any diploma or document conferring, or purporting to confer, any dental degree or license, or any certificate or transcript made, or purporting to be made, under this chapter.
- (2) Purchase, or procure by barter, any diploma, license, certificate, or transcript, with intent that it be used as evidence of the qualifications to practice dentistry of any person other than the one upon, or to whom, it was lawfully conferred or issued, or in

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fraud of the laws regulating the practice.

(3) Use any diploma, certificate, or transcript which has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license, to practice dentistry, or in order to procure registration as a dentist.

(4) Practice dentistry under a false name, under a name intended to mislead the public, under the license of another person of the same name, or hold ~~himself~~ **the person** out to the public under such a name as a practitioner of dentistry.

(5) Assume the title or degree of "Bachelor of Dental Surgery", append the letters "B.D.S.", "D.D.S.", "M.D.S.", or "D.M.D.", to ~~his~~ **the person's** name, or make use of the same, or prefix to his name the title of "Doctor", or any abbreviation thereof, not having had duly conferred upon ~~him~~ **the person** by diploma from some college, school, or board of examiners legally empowered to confer the same, the right to assume such a title.

(6) Assume any title or append or prefix any words to ~~his~~ **the person's** name, with intent to represent falsely that ~~he~~ **the person** has received a dental degree or license.

(7) Not having been licensed to practice dentistry under the laws of this state, represent that ~~he~~ **the person** is entitled so to practice (a dental licensee may use the prefix "Doctor" or "Dr." to his name).

(8) Falsely personate another at any examination ~~held by the board~~ to ascertain the preliminary professional education of candidates for dental certificates, dental degrees, or dental licenses or knowingly avail ~~himself~~ **the person** of the benefit of false personation.

~~(9)~~ **(8)** Otherwise violate this chapter.

(c) Each date that a person violates this section constitutes a separate offense.

SECTION 40. IC 25-14-1-27.5, AS AMENDED BY P.L.49-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 27.5. (a) The board may issue an instructor's license to an individual who is not otherwise licensed to practice dentistry in Indiana if the individual meets the following conditions:

(1) The individual has been licensed or has had the equivalent of a license for five (5) of the preceding nine (9) years to practice dentistry in the United States or in any country, territory, or other recognized jurisdiction.

(2) The individual has been approved under the credentialing process of an Indiana school of dentistry or an affiliated medical

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center of an Indiana school of dentistry that is accredited by:

- (A) the American Dental Association Commission on Dental Accreditation; or
- (B) the Joint Commission on Accreditation of Health Care Organizations.
- (3) The individual has successfully documented or demonstrated clinical and academic competency to the board.
- (4) The individual is fluent in the English language.
- (5) The individual passes the written law examination administered by the board.
- (6) The individual meets the continuing education requirements required by IC 25-14-3.
- (7) The individual pays the licensing fee set by the board under subsection (f).

(b) A license issued under this section must be held by the Indiana school of dentistry for which the licensee is employed.

(c) A license issued under this section does not meet the requirements of section 16 of this chapter and may not be used to obtain a general dentistry license under this article.

(d) A licensee under this section may teach and practice dentistry only at or on behalf of an Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry.

(e) An instructor's license is valid only during the time the licensee is employed or has a valid employment contract for a full-time faculty position at the Indiana school of dentistry or an affiliated medical center. The Indiana school of dentistry or the affiliated medical center shall notify the board in writing upon the termination of the employment contract of an individual who is issued a license under this section and surrender the license not later than thirty (30) days after the licensee's employment ceases.

(f) The board shall set a fee for the issuance and renewal of a license under this section.

(g) Unless renewed, a license issued by the board under this section expires annually on a date specified by the agency under IC 25-1-5-4. An applicant for renewal must pay the renewal fee set by the board on or before the renewal date specified by the agency.

(h) Not more than ~~five~~ **ten** percent (~~5%~~) (**10%**) of the Indiana school of dentistry's full-time faculty may be individuals licensed under this section.

(i) The board shall adopt rules under IC 4-22-2 necessary to implement this section.

(j) ~~This section expires June 30, 2013.~~

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SECTION 41. IC 25-14-1-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 30. (a) An individual who:**

**(1) is licensed under; and**

**(2) fails to comply with;**

**this article or rules adopted under this article is subject to discipline under IC 25-1-9.**

**(b) An individual who is licensed under this article is responsible for knowing the standards of conduct and practice established by this article and rules adopted under this article.**

SECTION 42. IC 25-14-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) A dentist must complete at least twenty (20) credit hours in continuing education courses each license period. At least half of the required minimum credit hours must be from live presentations or live workshops.**

(b) Credit hours may be applied under this section only toward the credit hour requirement for the license period during which the credit hours are earned.

(c) During a license period, a dentist may not earn more than five (5) credit hours toward the requirements under this section for continuing education courses that relate specifically to the area of practice management."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1273 as printed April 1, 2011.)

MISHLER

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1273 be amended to read as follows:

Page 1, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 2. IC 16-28-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 11. (a) Unless an individual is certified under this section:**

**(1) the individual may not practice as a qualified medication aide or a certified nurse aide; and**

**(2) a facility may not employ the individual as a qualified medication aide or a certified nurse aide.**

**(b) The ~~council~~ state department shall do the following:**

**(1) Establish a program for the certification of qualified**

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medication aides **and certified nurse aides** who work in facilities licensed under this article.

(2) Prescribe education and training programs for qualified medication aides **and certified nurse aides**, including course and inservice requirements. The training program must include a competency test that the individual must pass before being granted an initial certification.

(3) Determine the standards concerning the functions that may be performed by a qualified medication aide **and a certified nurse aide**.

(4) Establish annual certification fees for qualified medication aides.

(5) Adopt rules under IC 4-22-2 necessary to implement and enforce this section.

(c) The **state** department shall maintain a registry of each individual who is:

(1) certified as a:

(A) qualified medication aide; **or**

(B) **certified nurse aide; or**

(2) **registered as a home health aide under rules adopted under IC 16-27-1-7.**

(d) The department may conduct hearings for violations of this section under IC 4-21.5.

SECTION 3. IC 16-37-1-3.1, AS ADDED BY P.L.61-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2010 (RETROACTIVE)]: Sec. 3.1. (a) Beginning January 1, 2011, the state department shall establish the Indiana birth registration system (IBRS) for recording in an electronic format live births in Indiana.

(b) Beginning January 1, 2011, the state department shall establish the Indiana death registration system (IDRS) for recording in an electronic format deaths in Indiana.

(c) Submission of records on births and deaths shall be entered by:

(1) funeral directors;

(2) physicians;

(3) coroners;

(4) medical examiners;

(5) persons in attendance at birth; and

(6) local health departments;

using the electronic system created by the state department under this section.

(d) A person in attendance at a live birth shall report a birth to the

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local health officer in accordance with IC 16-37-2-2.

(e) Death records shall be submitted as follows, using the Indiana death registration system:

(1) The:

- (A) **physician last in attendance upon the deceased; or**
- (B) person in charge of interment;

shall initiate the document process. ~~and~~ **If the person in charge of interment initiates the process, the person in charge of interment shall** electronically submit the certificate required under IC 16-37-3-5 to the physician last in attendance upon the deceased not later than five (5) days after the death.

(2) The physician last in attendance upon the deceased shall electronically certify to the local health department the cause of death on the certificate of death not later than five (5) days after:

- (A) **initiating the document process; or**
- (B) receiving under IC 16-37-3-5 the electronic notification from the person in charge of interment.

(3) The local health officer shall submit the reports required under IC 16-37-1-5 to the state department not later than five (5) days after electronically receiving under IC 16-37-3-5 the completed certificate of death from the physician last in attendance."

Page 2, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 5. IC 16-37-3-3, AS AMENDED BY P.L.61-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The **physician last in attendance upon the deceased or the person in charge of interment** shall file a certificate of death or of stillbirth with the local health officer of the jurisdiction in which the death or stillbirth occurred.

(b) Notwithstanding subsection (a), beginning January 1, 2011, **the physician last in attendance upon the deceased or the person in charge of interment** shall use the Indiana death registration system established under IC 16-37-1-3.1 to file a certificate of death with the local health officer of the jurisdiction in which the death occurred. The local health officer shall retain a copy of the certificate of death.

SECTION 6. IC 16-37-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. The **physician last in attendance upon the deceased or the person in charge of interment** shall secure the personal data required by the state department by rules adopted under IC 4-22-2 for preparation of the certificate of death or of stillbirth from the persons best qualified to give the information.

SECTION 7. IC 16-37-3-5, AS AMENDED BY P.L.61-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2011]: Sec. 5. (a) **If the person in charge of interment initiates the process, the person in charge of interment** shall present a certificate of death to the physician last in attendance upon the deceased, who shall certify the cause of death upon the certificate of death or of stillbirth.

(b) Notwithstanding subsection (a), beginning January 1, 2011, using the Indiana death registration system established under IC 16-37-1-3.1, **if the person in charge of interment initiates the process, the person in charge of interment** shall electronically provide a certificate of death to the physician last in attendance upon the deceased. The physician last in attendance upon the deceased shall electronically certify to the local health department the cause of death on the certificate of death, using the Indiana death registration system."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1273 as printed April 1, 2011.)

MILLER

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1273 be amended to read as follows:

Page 1, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 2. IC 9-13-2-19.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 19.5. "Charge back", for purposes of IC 9-23-3, has the meaning set forth in IC 9-23-3-0.2.**

SECTION 3. IC 9-23-3-0.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.2. As used in this chapter, "charge back" means a manufacturer induced return of incentive payments to a manufacturer by a dealer. The term includes a manufacturer drawing funds from an account of a dealer.**

SECTION 4. IC 9-23-3-15, AS AMENDED BY P.L.76-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. (a) It is an unfair practice for a manufacturer or distributor to:

- (1) fail to pay all claims made by dealers for compensation for:
  - (A) delivery and preparation work; **and**
  - (B) warranty work; **and**

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**(C) incentive payments;**

within thirty (30) days after approval;

(2) fail to approve or disapprove the claims within thirty (30) days after receipt; or

(3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval.

(b) **Subject to subsection (c)**, a manufacturer or distributor may:

(1) audit claims made by a dealer **for warranty work or incentive payments for up to one (1) year after the date on which a claim is paid**; or

(2) charge back to a dealer any amounts paid on false or unsubstantiated claims **for warranty work or incentive payments**.

for up to two (2) years after the date on which a claim is paid. However, the limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim. A manufacturer or distributor shall not discriminate among dealers with regard to auditing or charging back claims.

**(c) The limitations of subsection (b) do not apply if the manufacturer or distributor can prove fraud on a claim."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1273 as printed April 1, 2011.)

MERRITT

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1273 be amended to read as follows:

Page 17, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 19. IC 25-35.6-1-8, AS AMENDED BY P.L.197-2007, SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) The board shall adopt rules under IC 4-22-2 to define the role of support personnel, including the following:

- (1) Supervisory responsibilities of the speech-language pathologist.
- (2) Ratio of support personnel to speech-language pathologists.
- (3) Scope of duties and restrictions of responsibilities for each type of support personnel.
- (4) Frequency, duration, and documentation of supervision.
- (5) Education and training required to perform services.

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(6) Procedures for renewing registration and terminating duties.

(b) A speech-language pathologist must meet the following qualifications to supervise speech-language pathology support personnel:

(1) Hold a current license as a speech-language pathologist issued by the board.

~~(2) Have at least three (3) years of clinical experience:~~

~~(3) (2) Except for an individual who:~~

**(A) before September 1, 1990, completed all the course work and obtained all the experience required to receive a life license from the department of education; and**

**(B) was issued a life license by the department of education;**

hold a certificate of clinical competence in speech-language pathology or its equivalent issued by a nationally recognized association for speech-language and hearing.

(c) Speech-language pathology support personnel may provide support services only under the supervision of a speech-language pathologist."

Page 29, between lines 34 and 35, begin a new paragraph and insert:

**"SECTION 24. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)] (a) Notwithstanding IC 25-35.6-1-8(b)(3), before amendment by this act on July 1, 2011, a speech-language pathologist is not required to hold a certificate of clinical competence in speech-language pathology or its equivalent issued by a nationally recognized association for speech-language and hearing to supervise speech-language pathology support personnel.**

**(b) This SECTION expires July 1, 2013.**

**SECTION 25. [EFFECTIVE JULY 1, 2011] (a) The Indiana professional licensing agency shall issue a license in speech-language pathology as follows:**

**(1) To each individual who applies for licensure and meets the following qualifications:**

**(A) Holds a license in speech and hearing therapy issued by the department of education.**

**(B) Has a master's degree in speech-language pathology or a related discipline.**

**(C) Has been employed as a speech-language pathologist for at least nine (9) months in the last five (5) years.**

**(2) To each individual who applies for licensure and meets all of the following qualifications:**

**(A) Holds a license in speech-language pathology issued by**

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the department of education.

**(B) Has:**

- (i) been employed as a speech-language pathologist for at least nine (9) months in the last five (5) years; or**
- (ii) taken at least thirty-six (36) hours of continuing education approved by the department of education or the health professions bureau after December 31, 2007, and before January 1, 2013.**

**(b) This SECTION expires July 1, 2013.**

SECTION 26. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)] **(a) 880 IAC 1-2.1-9(i) is void.**

**(b) The publisher of the Indiana Administrative Code and Indiana Register shall remove 880 IAC 1-2.1-9(i) from the Indiana Administrative Code.**

**(c) This SECTION expires January 1, 2012."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1273 as printed April 1, 2011.)

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