

SENATE BILL No. 415

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-22; IC 27-4-1-4.

Synopsis: Life insurance disclosure. Requires a life insurer to provide written notice to certain policy owners concerning the disposition of a life insurance policy. Makes a violation an unfair and deceptive act in the business of insurance.

Effective: July 1, 2011.

Simpson, Holdman

January 11, 2011, read first time and referred to Committee on Insurance and Financial Institutions.

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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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SENATE BILL No. 415



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

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

1 SECTION 1. IC 27-2-22 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]:

4 **Chapter 22. Life Insurance Consumer Disclosure**

5 **Sec. 1. As used in this chapter, "commissioner" refers to the**
6 **insurance commissioner appointed under IC 27-1-1-2.**

7 **Sec. 2. As used in this chapter, "insured" means the individual**
8 **whose life is the subject of insurance under a policy.**

9 **Sec. 3. As used in this chapter, "insurer" means an insurance**
10 **company that issues a policy.**

11 **Sec. 4. As used in this chapter, "policy" means an individual**
12 **insurance policy that:**

13 (1) provides the kind of insurance described in Class 1 of
14 IC 27-1-5-1; and

15 (2) is owned by a resident of Indiana.

16 **Sec. 5. As used in this chapter, "policy owner" means the owner**
17 **of a policy.**



1 **Sec. 6. An insurer shall, on a form prescribed by the**
2 **commissioner, provide written notice described in section 7 of this**
3 **chapter to a policy owner if:**

4 **(1) the insured is:**

5 **(A) at least sixty (60) years of age; or**

6 **(B) known by the insurer to be terminally or chronically**
7 **ill; and**

8 **(2) the:**

9 **(A) policy owner requests surrender, in whole or in part,**
10 **of the policy;**

11 **(B) policy owner requests an accelerated death benefit**
12 **under the policy;**

13 **(C) insurer sends notice to the policy owner that the policy**
14 **may lapse and the insurer has not sent notice of possible**
15 **lapse of the policy during the previous twelve (12) months;**
16 **or**

17 **(D) commissioner determines that the insurer must**
18 **provide the notice.**

19 **Sec. 7. The notice required by section 6 of this chapter must:**

20 **(1) inform the policy owner of:**

21 **(A) alternatives to the lapse or surrender of the policy; and**

22 **(B) the policy owner's rights in connection with the**
23 **disposition of the policy;**

24 **(2) be developed at no cost to insurers;**

25 **(3) be written in layman's terms; and**

26 **(4) contain the following:**

27 **(A) A statement explaining that life insurance is a critical**
28 **part of a broader financial plan.**

29 **(B) A statement explaining that alternatives exist to the**
30 **lapse or surrender of the policy.**

31 **(C) A general description of the following alternatives to**
32 **the lapse or surrender of the policy:**

33 **(i) Accelerated death benefits available under the policy**
34 **or as a rider to the policy.**

35 **(ii) The assignment of the policy as a gift.**

36 **(iii) The sale of the policy under a viatical settlement**
37 **contract, including an explanation that a viatical**
38 **settlement is a regulated transaction under IC 27-8-19.8.**

39 **(iv) The replacement of the policy.**

40 **(v) The maintenance of the policy under the terms of the**
41 **policy or a rider to the policy, or through a viatical**
42 **settlement contract.**

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- (vi) The maintenance of the policy through a loan issued by an insurer or a third party, using the policy or cash surrender value of the policy as collateral for the loan.
- (vii) Conversion of the policy from a term policy to a permanent policy.
- (viii) Conversion of the policy to obtain long term care coverage.

(D) A statement explaining the following:

- (i) That life insurance, viatical settlements, or other alternatives to the lapse or surrender of the policy may or may not be available to a particular policy owner depending on a number of circumstances, including the age and health status of the insured or the terms of the policy.
- (ii) That the policy owner should contact a financial adviser, an insurance producer, a broker, or an attorney to obtain further advice and assistance.

Sec. 8. A violation of this chapter is an unfair and deceptive act in the business of insurance under IC 27-4-1-4.

SECTION 2. 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.

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- 1 (2) Making, publishing, disseminating, circulating, or placing
- 2 before the public, or causing, directly or indirectly, to be made,
- 3 published, disseminated, circulated, or placed before the public,
- 4 in a newspaper, magazine, or other publication, or in the form of
- 5 a notice, circular, pamphlet, letter, or poster, or over any radio or
- 6 television station, or in any other way, an advertisement,
- 7 announcement, or statement containing any assertion,
- 8 representation, or statement with respect to any person in the
- 9 conduct of the person's insurance business, which is untrue,
- 10 deceptive, or misleading.
- 11 (3) Making, publishing, disseminating, or circulating, directly or
- 12 indirectly, or aiding, abetting, or encouraging the making,
- 13 publishing, disseminating, or circulating of any oral or written
- 14 statement or any pamphlet, circular, article, or literature which is
- 15 false, or maliciously critical of or derogatory to the financial
- 16 condition of an insurer, and which is calculated to injure any
- 17 person engaged in the business of insurance.
- 18 (4) Entering into any agreement to commit, or individually or by
- 19 a concerted action committing any act of boycott, coercion, or
- 20 intimidation resulting or tending to result in unreasonable
- 21 restraint of, or a monopoly in, the business of insurance.
- 22 (5) Filing with any supervisory or other public official, or making,
- 23 publishing, disseminating, circulating, or delivering to any person,
- 24 or placing before the public, or causing directly or indirectly, to
- 25 be made, published, disseminated, circulated, delivered to any
- 26 person, or placed before the public, any false statement of
- 27 financial condition of an insurer with intent to deceive. Making
- 28 any false entry in any book, report, or statement of any insurer
- 29 with intent to deceive any agent or examiner lawfully appointed
- 30 to examine into its condition or into any of its affairs, or any
- 31 public official to which such insurer is required by law to report,
- 32 or which has authority by law to examine into its condition or into
- 33 any of its affairs, or, with like intent, willfully omitting to make a
- 34 true entry of any material fact pertaining to the business of such
- 35 insurer in any book, report, or statement of such insurer.
- 36 (6) Issuing or delivering or permitting agents, officers, or
- 37 employees to issue or deliver, agency company stock or other
- 38 capital stock, or benefit certificates or shares in any common law
- 39 corporation, or securities or any special or advisory board
- 40 contracts or other contracts of any kind promising returns and
- 41 profits as an inducement to insurance.
- 42 (7) Making or permitting any of the following:

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

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever. However, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

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

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

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

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1 (8) Except as otherwise expressly provided by law, knowingly
 2 permitting or offering to make or making any contract or policy
 3 of insurance of any kind or kinds whatsoever, including but not in
 4 limitation, life annuities, or agreement as to such contract or
 5 policy other than as plainly expressed in such contract or policy
 6 issued thereon, or paying or allowing, or giving or offering to pay,
 7 allow, or give, directly or indirectly, as inducement to such
 8 insurance, or annuity, any rebate of premiums payable on the
 9 contract, or any special favor or advantage in the dividends,
 10 savings, or other benefits thereon, or any valuable consideration
 11 or inducement whatever not specified in the contract or policy; or
 12 giving, or selling, or purchasing or offering to give, sell, or
 13 purchase as inducement to such insurance or annuity or in
 14 connection therewith, any stocks, bonds, or other securities of any
 15 insurance company or other corporation, association, limited
 16 liability company, or partnership, or any dividends, savings, or
 17 profits accrued thereon, or anything of value whatsoever not
 18 specified in the contract. Nothing in this subdivision and
 19 subdivision (7) shall be construed as including within the
 20 definition of discrimination or rebates any of the following
 21 practices:

- 22 (A) Paying bonuses to policyholders or otherwise abating their
- 23 premiums in whole or in part out of surplus accumulated from
- 24 nonparticipating insurance, so long as any such bonuses or
- 25 abatement of premiums are fair and equitable to policyholders
- 26 and for the best interests of the company and its policyholders.
- 27 (B) In the case of life insurance policies issued on the
- 28 industrial debit plan, making allowance to policyholders who
- 29 have continuously for a specified period made premium
- 30 payments directly to an office of the insurer in an amount
- 31 which fairly represents the saving in collection expense.
- 32 (C) Readjustment of the rate of premium for a group insurance
- 33 policy based on the loss or expense experience thereunder, at
- 34 the end of the first year or of any subsequent year of insurance
- 35 thereunder, which may be made retroactive only for such
- 36 policy year.
- 37 (D) Paying by an insurer or insurance producer thereof duly
- 38 licensed as such under the laws of this state of money,
- 39 commission, or brokerage, or giving or allowing by an insurer
- 40 or such licensed insurance producer thereof anything of value,
- 41 for or on account of the solicitation or negotiation of policies
- 42 or other contracts of any kind or kinds, to a broker, an

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insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

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

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

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

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

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as

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1 an inducement to the purchase of any property, real, personal, or
 2 mixed, or services of any kind, where a charge to the insured is
 3 not made for and on account of such policy or certificate of
 4 insurance. However, this subdivision shall not apply to any of the
 5 following:

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

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

12 (C) Title insurance.

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

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

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

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

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

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

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

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

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

42 (16) Committing or performing, with such frequency as to

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1 indicate a general practice, unfair claim settlement practices (as
2 defined in section 4.5 of this chapter).

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

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

9 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
10 concerning motor vehicle insurance rates.

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

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

15 (22) Violating IC 27-8-26 concerning genetic screening or testing.

16 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
17 insurance producers.

18 (24) Violating IC 27-1-38 concerning depository institutions.

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

21 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired
22 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,
23 2007, and repealed).

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

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

27 (29) Engaging in dishonest or predatory insurance practices in
28 marketing or sales of insurance to members of the United States
29 Armed Forces as:

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

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

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

35 **(31) Violating IC 27-2-22 concerning life insurance consumer
36 disclosure.**

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

42 (1) define; and

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1 (2) while the members are on a United States military installation
2 or elsewhere in Indiana, protect members of the United States
3 Armed Forces from;
4 dishonest or predatory insurance practices.

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