

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1015 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 27-2-22 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]:
6 **Chapter 22. Retained Asset Accounts**
7 **Sec. 1. This chapter applies to a claim that is filed under a**
8 **policy after June 30, 2011.**
9 **Sec. 2. As used in this chapter, "commissioner" refers to the**
10 **insurance commissioner appointed under IC 27-1-1-2.**
11 **Sec. 3. As used in this chapter, "insured" means the individual**
12 **whose life is the subject of insurance under a policy.**
13 **Sec. 4. As used in this chapter, "insurer" means an insurance**
14 **company that issues a policy.**
15 **Sec. 5. As used in this chapter, "policy" means a policy or**
16 **certificate that provides the kind of insurance described in Class 1**
17 **of IC 27-1-5-1.**
18 **Sec. 6. As used in this chapter, "retained asset account" means**
19 **a mechanism through which the settlement of proceeds payable**
20 **under a policy occurs by the insurer's deposit of the proceeds into**
21 **a checking or draft account:**
22 **(1) in which the proceeds are retained by the insurer; and**
23 **(2) under a contract that is supplemental to the policy and**
24 **does not involve annuity benefits.**
25 **Sec. 7. An insurer may not use a retained asset account unless,**
26 **before the policy proceeds are transferred to the retained asset**
27 **account, the insurer:**
28 **(1) informs:**
29 **(A) the beneficiary;**
30 **(B) the legal representative of the beneficiary; or**
31 **(C) in the case of a group policy, the policy owner;**
32 **of the beneficiary's right to a lump sum payment of the full**

1 amount of the policy proceeds; and
2 (2) makes the disclosure described in section 8(c) of this
3 chapter to the beneficiary.

4 Sec. 8. (a) An insurer that pays a policy death benefit in any
5 manner other than a lump sum payment of the full amount of the
6 policy proceeds shall provide, in written or electronic form, a
7 disclosure containing a complete list and clear explanation of all
8 payment options available to the beneficiary.

9 (b) An insurer described in subsection (a) shall not use a
10 retained asset account as the default manner of payment of the
11 policy death benefit unless the insurer conspicuously discloses to
12 the beneficiary that, in the event that the beneficiary does not
13 choose another payment option, a retained asset account will be
14 used as the default manner of payment.

15 (c) The disclosure required by section 7 of this chapter must
16 include the following information:

17 (1) A recommendation for the beneficiary to consult a tax,
18 investment, or other financial adviser regarding tax liability
19 and investment options.

20 (2) The:

21 (A) method by which interest rates are determined;
22 (B) timing and method of interest rate changes; and
23 (C) dividends or other gains that may be paid to the
24 beneficiary;
25 applicable to the funds in the retained asset account.

26 (3) The identity of the custodian of the funds in the retained
27 asset account.

28 (4) Whether the retained asset account is insured by the
29 Federal Deposit Insurance Corporation and, if so, the
30 amount of the coverage.

31 (5) Any limitations on the number and amount of
32 withdrawals of funds from the retained asset account,
33 including minimum or maximum benefit payment amounts.

34 (6) Services related to the retained asset account that are
35 provided for a fee, including a list of the fees or method of
36 calculation of the fees.

37 (7) The nature and frequency of statements of account for
38 the retained asset account.

39 (8) That the payment of some or all of the proceeds may be
40 by the delivery of checks, drafts, or other instruments to
41 access the available funds.

42 (9) That the entire proceeds are available to the beneficiary
43 by the use of one (1) check, draft, or other instrument.

44 (10) That the insurer or a related party may derive income,
45 in addition to fees charged on the retained asset account,
46 from the total gains received on the investment of the
47 balance of funds in the retained asset account.

48 (11) The telephone number, address, and other contact
49 information, including Internet web site address, from which
50 the beneficiary may obtain additional information regarding
51 the retained asset account.

52 (12) The following statement:

1 **"FOR FURTHER INFORMATION, PLEASE**
 2 **CONTACT YOUR STATE DEPARTMENT OF**
 3 **INSURANCE."**

4 **(c) The disclosures described in this section must be written in:**

- 5 **(1) layman's terms; and**
 6 **(2) bold or at least 12 point type.**

7 **Sec. 9. A violation of this chapter is an unfair and deceptive act**
 8 **in the business of insurance under IC 27-4-1-4.**

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

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

16 (A) misrepresenting the terms of any policy issued or to be
 17 issued or the benefits or advantages promised thereby or the
 18 dividends or share of the surplus to be received thereon;

19 (B) making any false or misleading statement as to the
 20 dividends or share of surplus previously paid on similar
 21 policies;

22 (C) making any misleading representation or any
 23 misrepresentation as to the financial condition of any
 24 insurer, or as to the legal reserve system upon which any
 25 life insurer operates;

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

28 (E) making any misrepresentation to any policyholder
 29 insured in any company for the purpose of inducing or
 30 tending to induce such policyholder to lapse, forfeit, or
 31 surrender the policyholder's insurance.

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

42 (3) Making, publishing, disseminating, or circulating, directly or
 43 indirectly, or aiding, abetting, or encouraging the making,
 44 publishing, disseminating, or circulating of any oral or written
 45 statement or any pamphlet, circular, article, or literature which
 46 is false, or maliciously critical of or derogatory to the financial
 47 condition of an insurer, and which is calculated to injure any
 48 person engaged in the business of insurance.

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

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
4 making, publishing, disseminating, circulating, or delivering to
5 any person, or placing before the public, or causing directly or
6 indirectly, to be made, published, disseminated, circulated,
7 delivered to any person, or placed before the public, any false
8 statement of financial condition of an insurer with intent to
9 deceive. Making any false entry in any book, report, or statement
10 of any insurer with intent to deceive any agent or examiner
11 lawfully appointed to examine into its condition or into any of its
12 affairs, or any public official to which such insurer is required by
13 law to report, or which has authority by law to examine into its
14 condition or into any of its affairs, or, with like intent, willfully
15 omitting to make a true entry of any material fact pertaining to
16 the business of such insurer in any book, report, or statement of
17 such insurer.

18 (6) Issuing or delivering or permitting agents, officers, or
19 employees to issue or deliver, agency company stock or other
20 capital stock, or benefit certificates or shares in any common law
21 corporation, or securities or any special or advisory board
22 contracts or other contracts of any kind promising returns and
23 profits as an inducement to insurance.

24 (7) Making or permitting any of the following:

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

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

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

50 (i) policies or contracts of reinsurance or joint

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

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

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

40 (A) Paying bonuses to policyholders or otherwise abating
 41 their premiums in whole or in part out of surplus
 42 accumulated from nonparticipating insurance, so long as
 43 any such bonuses or abatement of premiums are fair and
 44 equitable to policyholders and for the best interests of the
 45 company and its policyholders.

46 (B) In the case of life insurance policies issued on the
 47 industrial debit plan, making allowance to policyholders
 48 who have continuously for a specified period made
 49 premium payments directly to an office of the insurer in an
 50 amount which fairly represents the saving in collection

- 1 expense.
- 2 (C) Readjustment of the rate of premium for a group
3 insurance policy based on the loss or expense experience
4 thereunder, at the end of the first year or of any subsequent
5 year of insurance thereunder, which may be made
6 retroactive only for such policy year.
- 7 (D) Paying by an insurer or insurance producer thereof duly
8 licensed as such under the laws of this state of money,
9 commission, or brokerage, or giving or allowing by an
10 insurer or such licensed insurance producer thereof
11 anything of value, for or on account of the solicitation or
12 negotiation of policies or other contracts of any kind or
13 kinds, to a broker, an insurance producer, or a solicitor duly
14 licensed under the laws of this state, but such broker,
15 insurance producer, or solicitor receiving such
16 consideration shall not pay, give, or allow credit for such
17 consideration as received in whole or in part, directly or
18 indirectly, to the insured by way of rebate.
- 19 (9) Requiring, as a condition precedent to loaning money upon
20 the security of a mortgage upon real property, that the owner of
21 the property to whom the money is to be loaned negotiate any
22 policy of insurance covering such real property through a
23 particular insurance producer or broker or brokers. However, this
24 subdivision shall not prevent the exercise by any lender of the
25 lender's right to approve or disapprove of the insurance company
26 selected by the borrower to underwrite the insurance.
- 27 (10) Entering into any contract, combination in the form of a
28 trust or otherwise, or conspiracy in restraint of commerce in the
29 business of insurance.
- 30 (11) Monopolizing or attempting to monopolize or combining or
31 conspiring with any other person or persons to monopolize any
32 part of commerce in the business of insurance. However,
33 participation as a member, director, or officer in the activities of
34 any nonprofit organization of insurance producers or other
35 workers in the insurance business shall not be interpreted, in
36 itself, to constitute a combination in restraint of trade or as
37 combining to create a monopoly as provided in this subdivision
38 and subdivision (10). The enumeration in this chapter of specific
39 unfair methods of competition and unfair or deceptive acts and
40 practices in the business of insurance is not exclusive or
41 restrictive or intended to limit the powers of the commissioner
42 or department or of any court of review under section 8 of this
43 chapter.
- 44 (12) Requiring as a condition precedent to the sale of real or
45 personal property under any contract of sale, conditional sales
46 contract, or other similar instrument or upon the security of a
47 chattel mortgage, that the buyer of such property negotiate any
48 policy of insurance covering such property through a particular
49 insurance company, insurance producer, or broker or brokers.
50 However, this subdivision shall not prevent the exercise by any

1 seller of such property or the one making a loan thereon of the
 2 right to approve or disapprove of the insurance company selected
 3 by the buyer to underwrite the insurance.

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

11 (A) Insurance issued to credit unions or members of credit
 12 unions in connection with the purchase of shares in such
 13 credit unions.

14 (B) Insurance employed as a means of guaranteeing the
 15 performance of goods and designed to benefit the
 16 purchasers or users of such goods.

17 (C) Title insurance.

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

21 (E) Insurance provided by or through motorists service
 22 clubs or associations.

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

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

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

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

32 (iv) insures against a flight cancellation to which the
 33 ticket relates.

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

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

48 (16) Committing or performing, with such frequency as to
 49 indicate a general practice, unfair claim settlement practices (as
 50 defined in section 4.5 of this chapter).

- 1 (17) Between policy renewal dates, unilaterally canceling an
 2 individual's coverage under an individual or group health
 3 insurance policy solely because of the individual's medical or
 4 physical condition.
- 5 (18) Using a policy form or rider that would permit a
 6 cancellation of coverage as described in subdivision (17).
- 7 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
 8 concerning motor vehicle insurance rates.
- 9 (20) Violating IC 27-8-21-2 concerning advertisements referring
 10 to interest rate guarantees.
- 11 (21) Violating IC 27-8-24.3 concerning insurance and health
 12 plan coverage for victims of abuse.
- 13 (22) Violating IC 27-8-26 concerning genetic screening or
 14 testing.
- 15 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 16 insurance producers.
- 17 (24) Violating IC 27-1-38 concerning depository institutions.
- 18 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
 19 the resolution of an appealed grievance decision.
- 20 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired
 21 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,
 22 2007, and repealed).
- 23 (27) Violating IC 27-2-21 concerning use of credit information.
- 24 (28) Violating IC 27-4-9-3 concerning recommendations to
 25 consumers.
- 26 (29) Engaging in dishonest or predatory insurance practices in
 27 marketing or sales of insurance to members of the United States
 28 Armed Forces as:
- 29 (A) described in the federal Military Personnel Financial
 30 Services Protection Act, P.L.109-290; or
- 31 (B) defined in rules adopted under subsection (b).
- 32 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated
 33 life insurance.
- 34 **(31) Violating IC 27-2-22 concerning retained asset accounts.**
- 35 (b) Except with respect to federal insurance programs under
 36 Subchapter III of Chapter 19 of Title 38 of the United States Code, the
 37 commissioner may, consistent with the federal Military Personnel
 38 Financial Services Protection Act (P.L.109-290), adopt rules under
 39 IC 4-22-2 to:
- 40 (1) define; and
- 41 (2) while the members are on a United States military
 42 installation or elsewhere in Indiana, protect members of the
 43 United States Armed Forces from;
 44 dishonest or predatory insurance practices."
 45 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1015 as printed March 25, 2011.)

Senator LANANE