

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE ENROLLED ACT No. 307

AN ACT to amend the Indiana Code concerning trade regulation.

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

SECTION 1. IC 24-4.7-4-7, AS ADDED BY P.L.61-2014, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) This section does not apply to the sale, transfer, or provision of a consumer's telephone number to a person that is exempt from this article under IC 24-4.7-1-1.

(b) A telephone solicitor, a supplier, or a caller may not sell, transfer, or make available to another person for solicitation purposes a consumer's telephone number if the telephone solicitor, supplier, or caller knows that the telephone number appears in the most current quarterly listing published by the division.

(c) A telephone solicitor, a supplier, or a caller may not transfer a live call to one (1) or more other persons if the call has been placed to a consumer in violation of this article or IC 24-5-14.

(d) A telephone solicitor, a supplier, or a caller may not provide substantial assistance or support to another person if the telephone solicitor, supplier, or caller knows or consciously avoids knowing that the person has engaged in any act or practice that violates this article or IC 24-5-14.

(e) A person may not provide substantial assistance or support to a telephone solicitor, a supplier, or a caller if the person knows



or consciously avoids knowing that the telephone solicitor, supplier, or caller has engaged in any act or practice that violates this article or IC 24-5-14. A communications service provider (as defined in IC 8-1-32.5-4) does not violate this subsection, and this subsection does not:

- (1) provide a right of action against a communications service provider; or
- (2) subject a communications service provider to any criminal penalties or civil remedies set forth in this article or in IC 24-5-14;

if the communications service provider's equipment or services are used only to transport, handle, or retransmit a communication that violates this article or IC 24-5-14.

SECTION 2. IC 25-1-7-1, AS AMENDED BY P.L.3-2014, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. The following terms are defined for this chapter:

- (1) "Board" means the appropriate entity described in IC 25-0.5-8.
- (2) "Director" refers to the director of the division of consumer protection.
- (3) "Division" refers to the division of consumer protection, office of the attorney general.
- (4) "Law enforcement agency" has the meaning set forth in IC 35-47-15-2.**
- ~~(4)~~ **(5) "Licensee" means a person who is:**
 - (A) licensed, certified, or registered by an entity described in IC 25-0.5-8; and
 - (B) the subject of a complaint filed with the division.
- ~~(5)~~ **(6) "Person" means an individual, a partnership, a limited liability company, or a corporation.**
- ~~(6)~~ **(7) "Regulated occupation" means an occupation in which a person is licensed, certified, or registered by one (1) of the entities described in IC 25-0.5-8.**

SECTION 3. IC 25-1-7-5, AS AMENDED BY P.L.3-2014, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Subsection (b)(1) does not apply to:

- (1) a complaint filed by:
 - (A) a member of any of the entities described in IC 25-0.5-8;
 - 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) **or 3(c)** 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 4. IC 25-1-7-10, AS AMENDED BY P.L.226-2011, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) Except as provided in section 3(b) **or 3(c)** 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.

(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) **required** under law; ~~or~~
- (2) **required** for the advancement of an investigation; ~~or~~
- (3) **made to a law enforcement agency that has jurisdiction or is reasonably believed to have jurisdiction over a person or matter involved in the complaint.**

SECTION 5. IC 27-1-12-46 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 46. (a) This section applies to a life insurance policy or certificate:**



- (1) that is issued after June 30, 2015;
- (2) the proceeds of which may be designated for use in the purchase of funeral services or merchandise upon the death of the insured; and
- (3) the ownership of which is not irrevocably assigned to a trustee and used to fund a contract under IC 30-2-13.

(b) An issuer of a life insurance policy or certificate described in subsection (a) may not represent to a policyholder or certificate holder, a prospective policyholder or certificate holder, an insured, a beneficiary, or any other person that the life insurance policy or certificate is:

- (1) a contract for prepaid services or merchandise under IC 30-2-13; or
- (2) a funeral policy or a policy with any similar designation.

(c) A life insurance policy or certificate described in subsection (a) may not be delivered or issued for delivery in Indiana, or issued by a company organized under the laws of this state, unless the life insurance policy or certificate either contains or includes in an attached disclaimer the following provisions, or corresponding provisions that the department determines are at least as favorable to policyholders or certificate holders:

(1) A statement that the life insurance policy or certificate is not a contract for prepaid services or merchandise under IC 30-2-13.

(2) A statement that the life insurance policy or certificate does not entitle the policyholder, the certificate holder, or any other person to:

- (A) prepaid funeral services or merchandise, or any services or merchandise described in IC 30-2-13-8; or
- (B) the right to file a complaint with the state board of funeral and cemetery service established by IC 25-15-9-1 for restitution from the preneed consumer protection fund under IC 30-2-13-29;

unless ownership of the policy is irrevocably assigned to a trustee to fund a contract entered into with a seller (as defined under IC 30-2-13-10) under IC 30-2-13.

(3) A statement that:

(A) the life insurance policy or certificate:

- (i) is not guaranteed to be exempt as a resource in determining eligibility for Medicaid under IC 12-15-2-17; and
- (ii) does not guarantee Medicaid eligibility; and



(B) Medicaid eligibility determinations are made in accordance with applicable Medicaid laws and policies.

(d) A person that willfully violates this section commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4 and is subject to the penalties and procedures set forth in IC 27-4-1.

SECTION 6. IC 27-4-1-4, AS AMENDED BY P.L.90-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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 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 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 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 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 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 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 27-2-22 concerning retained asset accounts.

(32) Violating IC 27-8-5-29 concerning health plans offered through a health benefit exchange (as defined in IC 27-19-2-8).

(33) Violating a requirement of the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), that is enforceable by the state.

(34) After June 30, 2015, violating IC 27-2-23 concerning unclaimed life insurance, annuity, or retained asset account benefits.

(35) Willfully violating IC 27-1-12-46 concerning a life insurance policy or certificate described in IC 27-1-12-46(a).

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

(1) define; and

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



dishonest or predatory insurance practices.

SECTION 7. IC 34-30-2-96.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 96.7. IC 24-4.7-4-7(e) (Concerning the use of a communications service provider's equipment or services to transport, handle, or retransmit a communication that violates IC 24-4.7 or IC 24-5-14).**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 307 — CC 1

