

# PROPOSED AMENDMENT

## HB 1238 # 11

### DIGEST

Coverage for living organ donors. Prohibits an insurer that issues a policy of life insurance, disability insurance, or long term care insurance from taking certain actions with respect to the coverage of individuals who are living organ donors. Provides that violating this prohibition constitutes an unfair or deceptive act or practice in the business of insurance.

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- 1           Page 7, between lines 12 and 13, begin a new paragraph and insert:  
2           "SECTION 7. IC 27-4-1-4, AS AMENDED BY SEA 277-2022,  
3           SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2022]: Sec. 4. (a) The following are hereby defined as unfair  
5           methods of competition and unfair and deceptive acts and practices in  
6           the business of insurance:  
7               (1) Making, issuing, circulating, or causing to be made, issued, or  
8               circulated, any estimate, illustration, circular, or statement:  
9                   (A) misrepresenting the terms of any policy issued or to be  
10                  issued or the benefits or advantages promised thereby or the  
11                  dividends or share of the surplus to be received thereon;  
12                  (B) making any false or misleading statement as to the  
13                  dividends or share of surplus previously paid on similar  
14                  policies;  
15                  (C) making any misleading representation or any  
16                  misrepresentation as to the financial condition of any insurer,  
17                  or as to the legal reserve system upon which any life insurer  
18                  operates;  
19                  (D) using any name or title of any policy or class of policies  
20                  misrepresenting the true nature thereof; or  
21                  (E) making any misrepresentation to any policyholder insured  
22                  in any company for the purpose of inducing or tending to  
23                  induce such policyholder to lapse, forfeit, or surrender the  
24                  policyholder's insurance.  
25               (2) Making, publishing, disseminating, circulating, or placing  
26               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:

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

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

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

25 (i) policies or contracts of reinsurance or joint reinsurance,  
26 or abstract and title insurance;

27 (ii) policies or contracts of insurance against loss or damage  
28 to aircraft, or against liability arising out of the ownership,  
29 maintenance, or use of any aircraft, or of vessels or craft,  
30 their cargoes, marine builders' risks, marine protection and  
31 indemnity, or other risks commonly insured under marine,  
32 as distinguished from inland marine, insurance; or

33 (iii) policies or contracts of any other kind or kinds of  
34 insurance whatsoever.

35 However, nothing contained in clause (C) shall be construed to  
36 apply to any of the kinds of insurance referred to in clauses (A)  
37 and (B) nor to reinsurance in relation to such kinds of insurance.  
38 Nothing in clause (A), (B), or (C) shall be construed as making or  
39 permitting any excessive, inadequate, or unfairly discriminatory  
40 charge or rate or any charge or rate determined by the department

1 or commissioner to meet the requirements of any other insurance  
2 rate regulatory law of this state.

3 (8) Except as otherwise expressly provided by IC 27-1-47 or  
4 another law, knowingly permitting or offering to make or making  
5 any contract or policy of insurance of any kind or kinds  
6 whatsoever, including but not in limitation, life annuities, or  
7 agreement as to such contract or policy other than as plainly  
8 expressed in such contract or policy issued thereon, or paying or  
9 allowing, or giving or offering to pay, allow, or give, directly or  
10 indirectly, as inducement to such insurance, or annuity, any rebate  
11 of premiums payable on the contract, or any special favor or  
12 advantage in the dividends, savings, or other benefits thereon, or  
13 any valuable consideration or inducement whatever not specified  
14 in the contract or policy; or giving, or selling, or purchasing or  
15 offering to give, sell, or purchase as inducement to such insurance  
16 or annuity or in connection therewith, any stocks, bonds, or other  
17 securities of any insurance company or other corporation,  
18 association, limited liability company, or partnership, or any  
19 dividends, savings, or profits accrued thereon, or anything of  
20 value whatsoever not specified in the contract. Nothing in this  
21 subdivision and subdivision (7) shall be construed as including  
22 within the definition of discrimination or rebates any of the  
23 following practices:

24 (A) Paying bonuses to policyholders or otherwise abating their  
25 premiums in whole or in part out of surplus accumulated from  
26 nonparticipating insurance, so long as any such bonuses or  
27 abatement of premiums are fair and equitable to policyholders  
28 and for the best interests of the company and its policyholders.

29 (B) In the case of life insurance policies issued on the  
30 industrial debit plan, making allowance to policyholders who  
31 have continuously for a specified period made premium  
32 payments directly to an office of the insurer in an amount  
33 which fairly represents the saving in collection expense.

34 (C) Readjustment of the rate of premium for a group insurance  
35 policy based on the loss or expense experience thereunder, at  
36 the end of the first year or of any subsequent year of insurance  
37 thereunder, which may be made retroactive only for such  
38 policy year.

39 (D) Paying by an insurer or insurance producer thereof duly  
40 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.

1 However, this subdivision shall not prevent the exercise by any  
 2 seller of such property or the one making a loan thereon of the  
 3 right to approve or disapprove of the insurance company selected  
 4 by the buyer to underwrite the insurance.

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

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

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

18 (C) Title insurance.

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

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

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

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

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

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

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

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

40 (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).

- 1 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated
- 2 life insurance.
- 3 (31) Violating IC 27-2-22 concerning retained asset accounts.
- 4 (32) Violating IC 27-8-5-29 concerning health plans offered
- 5 through a health benefit exchange (as defined in IC 27-19-2-8).
- 6 (33) Violating a requirement of the federal Patient Protection and
- 7 Affordable Care Act (P.L. 111-148), as amended by the federal
- 8 Health Care and Education Reconciliation Act of 2010 (P.L.
- 9 111-152), that is enforceable by the state.
- 10 (34) After June 30, 2015, violating IC 27-2-23 concerning
- 11 unclaimed life insurance, annuity, or retained asset account
- 12 benefits.
- 13 (35) Willfully violating IC 27-1-12-46 concerning a life insurance
- 14 policy or certificate described in IC 27-1-12-46(a).
- 15 (36) Violating IC 27-1-37-7 concerning prohibiting the disclosure
- 16 of health care service claims data.
- 17 (37) Violating IC 27-4-10-10 concerning virtual claims payments.
- 18 (38) Violating IC 27-1-24.5 concerning pharmacy benefit
- 19 managers.
- 20 (39) Violating IC 27-7-17-16 or IC 27-7-17-17 concerning the
- 21 marketing of travel insurance policies.
- 22 **(40) Violating IC 27-8-36-6 concerning living organ donor**
- 23 **insurance coverage and organ donation.**
- 24 (b) Except with respect to federal insurance programs under
- 25 Subchapter III of Chapter 19 of Title 38 of the United States Code, the
- 26 commissioner may, consistent with the federal Military Personnel
- 27 Financial Services Protection Act (10 U.S.C. 992 note), adopt rules
- 28 under IC 4-22-2 to:
- 29 (1) define; and
- 30 (2) while the members are on a United States military installation
- 31 or elsewhere in Indiana, protect members of the United States
- 32 Armed Forces from;
- 33 dishonest or predatory insurance practices."
- 34 Page 8, between lines 22 and 23, begin a new paragraph and insert:
- 35 "SECTION 10. IC 27-8-36 IS ADDED TO THE INDIANA CODE
- 36 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 37 JULY 1, 2022]:
- 38 **Chapter 36. Coverage for Living Organ Donors**
- 39 **Sec. 1. As used in this chapter, "individual" means a natural**
- 40 **person.**



1       **Sec. 2. As used in this chapter, "insurance policy" means:**

2           **(1) a policy of life insurance or disability insurance described**  
3           **in Class 1 of IC 27-1-5-1; and**

4           **(2) a long term care insurance policy (as defined in**  
5           **IC 27-8-12-5).**

6       **Sec. 3. As used in this chapter, "insurer" means an insurance**  
7       **company that issues an insurance policy.**

8       **Sec. 4. As used in this chapter, "living organ donor" means an**  
9       **individual who:**

10           **(1) intends to donate; or**

11           **(2) has donated;**

12       **all or part of an organ and is not deceased.**

13       **Sec. 5. An insurer may not do any of the following:**

14           **(1) Decline or limit coverage of an individual under an**  
15           **insurance policy solely because the individual is a living organ**  
16           **donor.**

17           **(2) Preclude an insured individual from donating all or part**  
18           **of an organ as a condition of receiving or continuing to**  
19           **receive an insurance policy.**

20           **(3) Discriminate in the offering, issuance, cancellation,**  
21           **amount of coverage, price, or any other condition of an**  
22           **insurance policy for an individual based solely, and without**  
23           **any additional actuarial risks, upon the status of the**  
24           **individual as a living organ donor.**

25       **Sec. 6. An insurer who violates this chapter commits an unfair**  
26       **and deceptive act and practice in the business of insurance."**

27       Renumber all SECTIONS consecutively.

(Reference is to HB 1238 as printed January 18, 2022.)