

**IC 27-4**

**ARTICLE 4. UNFAIR COMPETITION;  
UNAUTHORIZED INSURERS; FOREIGN INSURERS**

**IC 27-4-1**

**Chapter 1. Unfair Competition; Unfair or Deceptive Acts and Practices**

**IC 27-4-1-1**

**Purpose**

Sec. 1. The purpose of this chapter is to regulate the trade practices in the business of insurance, in accordance with the intent of Congress as expressed in 15 U.S.C. 1011 et seq., by defining, or providing for the determination of, all such practices which constitute in this state unfair methods of competition and unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

*(Formerly: Acts 1947, c.112, s.1.) As amended by P.L.252-1985, SEC.144.*

**IC 27-4-1-2**

**Definitions**

Sec. 2. When and as used in this chapter:

(a) The term "person" shall mean any individual, corporation, company including any farm mutual insurance company, association, partnership, firm, reciprocal exchange, inter-insurer, Lloyds insurers, society, fraternal benefit society, lodge, order, council, corps, and any other association or legal entity, engaged in the business of insurance, including but not in limitation of the foregoing, insurance producers, brokers, solicitors, advisors, auditors, and adjusters.

(b) "Department" shall mean the department of insurance of this state created and defined as a department in the state government of the state of Indiana by IC 27-1.

(c) "Commissioner" shall mean the insurance commissioner of this state appointed pursuant to, and on and in whom the powers, duties, management, and control of the department are conferred and vested by, the provisions of IC 27-1.

*(Formerly: Acts 1947, c.112, s.2.) As amended by P.L.252-1985, SEC.145; P.L.129-2003, SEC.7; P.L.178-2003, SEC.34.*

**IC 27-4-1-3**

**Prohibited use of unfair methods of competition and deceptive acts or practices**

Sec. 3. No person shall engage in this state in any trade practice which is defined in this chapter or determined pursuant to this chapter as an unfair method of competition or as an unfair or deceptive act or practice in the business of insurance as defined in IC 27-1-2-3.

*(Formerly: Acts 1947, c.112, s.3.) As amended by P.L.252-1985, SEC.146.*

**IC 27-4-1-4**

**Enumeration of unfair methods of competition and deceptive acts and practices**

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.

(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.

*(Formerly: Acts 1947, c.112, s.4; Acts 1955, c.10, s.1; Acts 1971, P.L.389, SEC.1; Acts 1974, P.L.124, SEC.1.) As amended by Acts 1981, P.L.247, SEC.1; P.L.259-1983, SEC.1; P.L.271-1987, SEC.5; P.L.5-1988, SEC.144; P.L.160-1988, SEC.1; P.L.2-1992, SEC.783; P.L.122-1992, SEC.2; P.L.8-1993, SEC.417; P.L.8-1993, SEC.418; P.L.225-1993, SEC.1; P.L.223-1993, SEC.6; P.L.1-1994, SEC.134; P.L.133-1994, SEC.1; P.L.116-1994, SEC.49; P.L.2-1995, SEC.104; P.L.188-1996, SEC.1; P.L.185-1996, SEC.10; P.L.150-1997, SEC.2; P.L.132-2001, SEC.8; P.L.130-2002, SEC.3; P.L.178-2003, SEC.35; P.L.201-2003, SEC.2; P.L.211-2003, SEC.1; P.L.97-2004, SEC.97; P.L.39-2005, SEC.2; P.L.138-2005, SEC.1; P.L.1-2006, SEC.487; P.L.131-2007, SEC.1; P.L.3-2008, SEC.211; P.L.112-2008, SEC.2; P.L.1-2009, SEC.146; P.L.67-2011, SEC.2.*

#### **IC 27-4-1-4.5**

##### **Enumeration of unfair claim settlement practices**

Sec. 4.5. The following are unfair claim settlement practices:

- (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information.
- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.
- (6) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
- (7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.
- (8) Attempting to settle a claim for less than the amount to which a reasonable individual would have believed the individual was entitled by reference to written or printed advertising material accompanying or made part of an application.
- (9) Attempting to settle claims on the basis of an application that was altered without notice to or knowledge or consent of the insured.
- (10) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made.
- (11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
- (12) Delaying the investigation or payment of claims by requiring an insured, a claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.
- (13) Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.
- (14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a



compromise settlement.

(15) In negotiations concerning liability insurance claims, ascribing a percentage of fault to a person seeking to recover from an insured party, in spite of an obvious absence of fault on the part of that person.

(16) The unfair claims settlement practices defined in IC 27-4-1.5.

*As added by P.L.259-1983, SEC.2. Amended by P.L.271-1987, SEC.6; P.L.194-1991, SEC.1; P.L.203-2001, SEC.7.*

#### **IC 27-4-1-5**

##### **Statement of charges; notice and hearing; intervention**

Sec. 5. (a) Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section 4 of this chapter and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and cause to be served upon such person a statement of the charges in that respect and a notice in writing of a hearing thereon to be held under IC 4-21.5-3.

(b) Whenever the hearing involves the claim, averment, or complaint of, or made by, a person who is not an investigator, deputy, examiner, or other employee of the department, a copy of the substance of such claim, averment, or complaint shall be included in or exhibited with such notice. The commissioner and department shall afford all interested persons or parties the right and opportunity for the settlement or adjustment of all claims, controversies, and issues when such persons or parties shall join in a request in writing for such opportunity.

*(Formerly: Acts 1947, c.112, s.5.) As amended by P.L.252-1985, SEC.147; P.L.7-1987, SEC.145.*

#### **IC 27-4-1-5.5**

##### **Repealed**

*(Repealed by P.L.1-1991, SEC.165.)*

#### **IC 27-4-1-5.6**

##### **Unfair claim settlement practice complaint; response; investigation; report; notice of remedies**

Sec. 5.6. (a) A person who believes the person has been adversely affected by an unfair claim settlement practice under section 4.5 of this chapter may file a complaint with the commissioner. If the commissioner believes an unfair claim settlement practice has occurred, the commissioner shall, within ten (10) business days from the date of receipt of a written complaint, deliver a copy of the complaint to the insurer and shall respond in writing to the complaining party, at the address provided in the complaint, advising the party of the following:

(1) The specific action taken by the department on the complaint.

(2) Any further investigations or other actions that are intended by the department.

(b) An insurer who receives a written notice of complaint under subsection (a) shall promptly conduct an investigation of the matters alleged in the complaint. Within twenty (20) business days from the date of receipt of the complaint, the insurer shall provide to the commissioner and the complaining party a written report containing the following information:

(1) The specific reasons for actions taken by the insurer with respect to the claim.

(2) The specific reasons for any inaction by the insurer with respect to the claim.

(3) If the claim has not been settled, a good faith estimate of the time required for settlement.

(c) An insurer who commits an unfair claims settlement practice or who fails to comply with this section is subject to action by the commissioner under section 6 of this chapter.

(d) Each insurer shall provide to each current policyholder a one (1) time written notice of the remedies provided under this section. Future policyholders shall be notified by the insurer at the time the insurance policy is issued.

*As added by P.L.1-1991, SEC.166.*

#### **IC 27-4-1-6**

##### **Cease and desist order; penalties**

Sec. 6. (a) If after a hearing under IC 4-21.5-3, the commissioner determines that the method of competition or the act or practice in question is defined in section 4 of this chapter and that the person complained of has engaged in such method of competition, act, or practice in violation of this chapter, he shall reduce his findings to writing and shall issue and cause to be served on the person charged with the violation an order requiring such person to cease and desist from such method of competition, act, or practice, and the commissioner may at his discretion order one (1) or more of the following:

(1) Payment of a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each act or violation. If the person knew or reasonably should have known that he was in violation of this chapter, the penalty may be not more than fifty thousand dollars (\$50,000) for each act or violation.

(2) Suspension or revocation of the person's license, or certificate of authority, if he knew or reasonably should have known he was in violation of this chapter.

(b) In determining the amount of a civil penalty under subsection (a)(1), the commissioner shall consider the remediation efforts undertaken by the person.

(c) All civil penalties imposed and collected under this section shall be deposited in the state general fund.

*(Formerly: Acts 1947, c.112, s.6.) As amended by P.L.259-1983, SEC.3; P.L.7-1987, SEC.146; P.L.121-1990, SEC.4; P.L.149-1990,*

SEC.2; P.L.203-2001, SEC.8.

#### **IC 27-4-1-7**

##### **Judicial review; civil enforcement orders**

Sec. 7. (a) Any person required by an order of the commissioner under section 6 of this chapter to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 4 of this chapter may obtain judicial review of such order under IC 4-21.5-5.

(b) The commissioner may file a petition for civil enforcement of an order under IC 4-21.5-6.

*(Formerly: Acts 1947, c.112, s.7.) As amended by P.L.252-1985, SEC.148; P.L.7-1987, SEC.147.*

#### **IC 27-4-1-8**

##### **Determination of additional methods of unfair competition or deceptive acts or practices; notice and hearing**

Sec. 8. Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 4 of this chapter, that such method of competition is unfair, or that such act or practice is unfair or deceptive, and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and cause to be served upon such person a statement of the charges in that respect and a notice of a hearing thereon. Each such hearing shall be conducted under IC 4-21.5-3 in the same manner as the hearings provided for in section 5 of this chapter.

*(Formerly: Acts 1947, c.112, s.8.) As amended by P.L.252-1985, SEC.149; P.L.7-1987, SEC.148.*

#### **IC 27-4-1-9**

##### **Judicial review**

Sec. 9. Any party to a proceeding under this chapter, including any intervenor, may obtain judicial review under IC 4-21.5-5.

*(Formerly: Acts 1947, c.112, s.9.) As amended by P.L.252-1985, SEC.150; P.L.7-1987, SEC.149.*

#### **IC 27-4-1-10**

##### **Application of other laws**

Sec. 10. No order of the commissioner under this chapter or judgment of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other statute of this state.

*(Formerly: Acts 1947, c.112, s.10.) As amended by P.L.252-1985, SEC.151.*

#### **IC 27-4-1-11**

##### **Foreign or alien insurer's unfair competition or unfair or deceptive practice by periodical or radio; notice to supervisory official of**

**domiciliary state**

Sec. 11. If any foreign or alien insurer engages in this state in an unfair method of competition or in an unfair or deceptive practice as defined in section 4(1) or 4(2) of this chapter by means of any advertisement, announcement, or statement, in any magazine or other periodical publication having a general circulation in more than five (5) states, or by means of any radio broadcast to more than five (5) states, including the state of domicile of such insurer, and if the laws of the state where such insurer is domiciled make provision for enjoining of such method of competition or practice, it shall be the duty of the commissioner to advise the insurance supervisory official of such domiciliary state of the violation in order that he may take appropriate action, but the commissioner shall have no authority to proceed, with respect to such violation, under either section 5 or 8 of this chapter. For the purpose of this section the domiciliary state of an alien insurer shall be deemed to be its state of entry, or the state of the principal office in the United States.

*(Formerly: Acts 1947, c.112, s.11.) As amended by P.L.252-1985, SEC.152.*

**IC 27-4-1-12****Violations; penalties**

Sec. 12. Any person who violates a cease and desist order of the commissioner under section 6 of this chapter, or an order of the court under IC 4-21.5, after it has become final, and while such order is in effect, may, after notice and hearing under IC 4-21.5 and upon order of the commissioner, be subject at the discretion of the commissioner to one (1) or more of the following:

- (1) A civil penalty of not more than twenty-five thousand dollars (\$25,000) for each act or violation.
- (2) Suspension or revocation of the person's license or certificate of authority.

*(Formerly: Acts 1947, c.112, s.12.) As amended by P.L.259-1983, SEC.4; P.L.7-1987, SEC.150; P.L.121-1990, SEC.5; P.L.149-1990, SEC.3.*

**IC 27-4-1-13****Cumulative powers and remedies**

Sec. 13. The powers vested in the commissioner and the department by this chapter shall be additional to any other powers to enforce any penalties or forfeitures authorized by law with respect to the methods, acts, and practices declared hereby to be unfair or deceptive.

*(Formerly: Acts 1947, c.112, s.13.) As amended by P.L.252-1985, SEC.153.*

**IC 27-4-1-14****Repealed**

*(Repealed by P.L.7-1987, SEC.151.)*

**IC 27-4-1-15****Enforcement; additional personnel**

Sec. 15. (a) For the purpose of maintaining the affirmative, active, and definite administration of the provisions of this chapter, the commissioner, with the approval of the governor, may appoint such additional actuaries, agents, deputies, examiners, assistants, stenographers, reporters, and other employees in the department as may be found necessary to carry out the provisions of this chapter. Except as otherwise provided in this chapter, such additional deputies, examiners, assistants, reporters, and employees so appointed shall be chosen for their fitness, either professional or practical, as the nature of the position may require, irrespective of their political beliefs or affiliations. The technical or professional qualifications of any applicant shall be determined by examination, professional rating, or otherwise, as the commissioner with the approval of the governor may determine. Subject to the approval of the governor and the state budget director, the salaries of such additional actuaries, agents, deputies, examiners, assistants, stenographers, reporters, and other employees shall be fixed by the commissioner. Any actuary agent, deputy, examiner, assistant, stenographer, or employee so employed may be removed at any time by the commissioner.

(b) In the absence of the commissioner, he may, by written order, designate a deputy to conduct any hearing, and, in such case, such deputy commissioner shall possess and may exercise all powers of the commissioner with respect to the matter in hearing.

(c) Neither the commissioner nor any actuary, deputy, examiner, assistant, or employee in the department shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter.

*(Formerly: Acts 1947, c.112, s.15.) As amended by P.L.252-1985, SEC.155.*

**IC 27-4-1-16****Inapplicable laws**

Sec. 16. No provision of IC 4-22-2 shall be construed to apply to any hearings held or proceedings had pursuant to the provisions of this chapter.

*(Formerly: Acts 1947, c.112, s.16.) As amended by P.L.252-1985, SEC.156.*

**IC 27-4-1-17****Construction and application**

Sec. 17. (a) This chapter shall be, and shall be construed as being, in addition to IC 27-1, and in addition to IC 27-7-2, and in addition to any and all statutes supplemental to either, and in addition to any and all other laws of the state of Indiana concerning insurance or the business of insurance, whether enacted at any time in the 1947 regular session or at any preceding session of the general assembly

of the state of Indiana.

(b) Whereas certain unlawful practices are set forth in other insurance statutes of the state of Indiana which unlawful practices are similar or identical to those enumerated in section 4 of this chapter and are characterized in other insurance statutes as criminal in nature, it is deemed desirable to retain the criminal penalties imposed by other insurance statutes; for that purpose, nothing contained in this chapter shall be construed to repeal, amend, or otherwise to affect in any way IC 27-1, IC 27-7-2, or any other law of the state of Indiana concerning insurance or the business of insurance whether enacted at any time in the 1947 regular session or at any preceding session of the general assembly of the state of Indiana, it being the intent of this chapter to provide additional administrative remedies for the purpose of controlling unfair methods of competition and unfair and deceptive acts and practices in and affecting the business of insurance.

(c) Nothing in this chapter shall be construed as exempting or excepting from the provisions of this chapter any person engaged in the business of insurance in this state, except as in this chapter otherwise expressly provided.

*(Formerly: Acts 1947, c.112, s.18.) As amended by P.L.252-1985, SEC.157.*

#### **IC 27-4-1-18**

##### **Causes of action created**

Sec. 18. This article does not create a cause of action other than an action by:

- (1) the commissioner to enforce his order; or
- (2) a person, as defined in section 1 of this chapter, to appeal an order of the commissioner.

*As added by P.L.259-1983, SEC.6.*

#### **IC 27-4-1-19**

##### **Annual report of consumer complaints**

Sec. 19. (a) The commissioner shall, on an annual basis and in a manner determined by the commissioner, publish figures and produce a report containing the following information:

- (1) The ratio of valid consumer complaints lodged against each company weighted by the direct premiums earned in Indiana by each company.
- (2) A separate listing of any company determined by the commissioner to have committed a practice that is designated an unfair claim settlement practice under section 4.5 of this chapter if the practice is committed flagrantly and in conscious disregard of section 4.5 of this chapter or if the practice is committed with a frequency that indicates a general business practice.
- (3) Any enforcement action taken by the commissioner as a result of a practice described in subdivision (2).

(b) The commissioner shall provide a copy of the report required

under subsection (a) to the house of representatives and senate committees of the general assembly that are assigned responsibility for insurance issues.

*As added by P.L.121-1990, SEC.6 and P.L.149-1990, SEC.4.  
Amended by P.L.203-2001, SEC.9.*

## **IC 27-4-1.5**

### **Chapter 1.5. Auto Repair Claims Settlement**

#### **IC 27-4-1.5-0.1**

##### **Application of chapter**

Sec. 0.1. The addition of this chapter by P.L.194-1991 applies to the repair of motor vehicles under insurance policies issued or renewed after June 30, 1991.

*As added by P.L.220-2011, SEC.430.*

#### **IC 27-4-1.5-1**

##### **"Body part" defined**

Sec. 1. (a) As used in this chapter, "body part" means a replacement for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle.

(b) The term includes the inner and outer panels of the body of a motor vehicle.

*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-2**

##### **"Body shop" defined**

Sec. 2. As used in this chapter, "body shop" means a business that repairs damage to the exterior of motor vehicles.

*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-3**

##### **"Insured" defined**

Sec. 3. As used in this chapter, "insured" means a person who is entitled to the coverage provided by an insurance policy.

*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-4**

##### **"Insurer" defined**

Sec. 4. As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3.

*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-5**

##### **"Motor vehicle" defined**

Sec. 5. As used in this chapter, "motor vehicle" has the meaning set forth in IC 9-13-2-105.

*As added by P.L.194-1991, SEC.2. Amended by P.L.1-1992, SEC.150.*

#### **IC 27-4-1.5-6**

##### **"New body part" defined**



Sec. 6. As used in this chapter, "new body part" means a body part that has not previously been attached to a motor vehicle.

*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-7**

##### **"Used body part" defined**

Sec. 7. As used in this chapter, "used body part" means a body part that has previously been attached to a motor vehicle.

*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-8**

##### **Insurer notice to insured; body parts to be used in repair**

Sec. 8. (a) An insurer that is obligated to pay at least part of the cost of repairing the exterior of a motor vehicle under an insurance policy issued by the insurer may not direct a body shop to repair the motor vehicle until the insurer has presented the insured with a written notice that meets the requirements set forth in subsections (b) and (c).

(b) An insurer described in subsection (a) shall present the insured with a written notice that does the following:

(1) Informs the insured that the insured has a right to approve the type of body parts to be used in the repair of the motor vehicle.

(2) Gives the insured an opportunity, in approving the type of body parts to be used in the repair of the motor vehicle, to select from among the following:

(A) New body parts manufactured by or for the manufacturer of the motor vehicle.

(B) New body parts that were not manufactured by or for the manufacturer of the motor vehicle.

(C) Used body parts.

(c) An insurer described in subsection (a) shall give the insured an opportunity to indicate in writing the type of body part that the insured approves for use in the repair of the motor vehicle.

(d) This section applies only in the five (5) years after the model year of the motor vehicle.

*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-9**

##### **Failure to give insured notice; unfair claim settlement practice**

Sec. 9. An insurer that:

(1) is required to give a written notice to an insured under section 8 of this chapter concerning the repair of a motor vehicle;

(2) does not give the insured a written notice that meets the

requirements set forth in section 8(b) of this chapter; and  
(3) directs a body shop to repair the motor vehicle;  
commits an unfair claim settlement practice under IC 27-4-1-4.5.  
*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-10**

##### **Failure to permit selection of body parts by insured; unfair claim settlement practice**

Sec. 10. An insurer that:  
(1) is subject to the requirement set forth in section 8(c) of this chapter with respect to the repair of a motor vehicle;  
(2) does not satisfy this requirement; and  
(3) directs a body shop to repair the motor vehicle;  
commits an unfair claims settlement practice under IC 27-4-1-4.5.  
*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-11**

##### **Direction by insurer to use different body parts from those directed by insured; unfair claims settlement practice**

Sec. 11. An insurer that:  
(1) under section 8(c) of this chapter gives an insured an opportunity to indicate in writing the type of body part that the insured approves for use in the repair of the motor vehicle; and  
(2) directs a body shop to repair the motor vehicle using a type of body part different from the type of body part that the insured approved for use in the repair of the motor vehicle;  
commits an unfair claim settlement practice under IC 27-4-1-4.5.  
*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-12**

##### **Refusal to direct use of or pay for body parts directed by insured; unfair claim settlement practice**

Sec. 12. An insurer that:  
(1) under section 8(c) of this chapter gives an insured an opportunity to indicate in writing the type of body parts that the insured approves for use in the repair of a motor vehicle; and  
(2) refuses to:  
(A) pay for; or  
(B) direct a body shop to use;  
the type of body parts approved by the insured under section 8(c) of this chapter in the repair of the motor vehicle;  
commits an unfair claims settlement practice under IC 27-4-1-4.5.  
*As added by P.L.194-1991, SEC.2.*

#### **IC 27-4-1.5-13**

##### **Insurer duties performed by agent or body shop**

Sec. 13. An act that an insurer is required to perform under this chapter shall be considered to have been performed by the insurer if the act is performed by:

(1) an agent of the insurer; or

(2) a body shop that the insurer directs to repair a motor vehicle.

*As added by P.L.194-1991, SEC.2.*

**IC 27-4-2**

**Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2728.)*

### **IC 27-4-3**

#### **Chapter 3. Restrictions on Unlawful Insurance Producer Representation**

### **IC 27-4-3-1**

#### **Two or more companies coercing or inducing insurance producer to refrain from representing additional companies**

Sec. 1. It is hereby declared unlawful for any two (2) or more insurance companies writing the same class, or classes, of risks and doing business in this state, directly or indirectly, to enter into any arrangement, contract, agreement, understanding, combination or association to require, coerce or induce any insurance producer or representative of any two (2) or more of such insurance companies within the state of Indiana to refrain from representing other such insurance companies, or to afford any advantage to any insurance producer to refrain from representing other such insurance companies or to impose upon the insurance producer any disadvantage by reason of the insurance producer's acting as representative of other such insurance companies.

*(Formerly: Acts 1937, c.46, s.1.) As amended by P.L.178-2003, SEC.36.*

### **IC 27-4-3-2**

#### **Insurance producer's agreement not to represent additional companies; exclusive representation of single company**

Sec. 2. (a) It is unlawful for any insurance producer representing or acting for two (2) or more insurance companies writing the same class or classes, of risks to enter, either directly or indirectly, into any agreement, arrangement, contract or understanding with one (1) or more of such companies that the insurance producer will refrain from representing any other like company or companies, and it is unlawful for any such insurance company, not having a contract requiring an insurance producer to represent the insurance company alone, in any manner to require, coerce, or induce any insurance producer to refrain from representing any other like company or companies.

(b) This section does not prevent any insurance company or insurance producer from at any time entering into a bona fide contract whereby an insurance producer agrees that the insurance producer will thereafter represent a single company exclusively.

*(Formerly: Acts 1937, c.46, s.2.) As amended by P.L.178-2003, SEC.37.*

### **IC 27-4-3-3**

#### **Violations; license suspension; public hearing; appeal**

Sec. 3. For violation of any provision of this chapter, the license of the offending company or insurance producer to transact the business of insurance within the state of Indiana shall be suspended for a period of three (3) years. Whenever information of any such violation shall come to the knowledge of the commissioner of insurance, the commissioner shall issue an order fixing a day certain,

not more than thirty (30) nor less than twenty (20) days from the making thereof, upon which the offender shall appear and show cause why such penalty should not be enforced, such order specifying with reasonable certainty the violation charged, and if, after hearing, the commissioner shall determine that the company or insurance producer is guilty of such violation, the commissioner shall forthwith suspend the license of the offender for a period of three (3) years. Such hearing shall be public, and at any such hearing any person or corporation having lodged information of such violation with the commissioner shall be entitled to be present and submit evidence. Within thirty (30) days after the suspension of any such license, the insurance producer or company whose license has been suspended may appeal from the ruling of the commissioner of insurance to the circuit or superior court of the county in which the insurance producer resides or in which such company has its principal place of business, and if such company be a foreign insurance company then such appeal may be taken by such company to the circuit or superior court of Marion County.

*(Formerly: Acts 1937, c.46, s.3.) As amended by P.L.252-1985, SEC.158; P.L.178-2003, SEC.38.*

## **IC 27-4-4**

### **Chapter 4. Unauthorized Insurers Process Act**

#### **IC 27-4-4-1**

##### **Purpose; legislative declaration**

Sec. 1. (a) The purpose of this chapter is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of the insureds or beneficiaries under insurance contracts.

(b) The general assembly declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the general assembly provides in this chapter a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this chapter, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of 15 U.S.C. 1011 et seq., which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

*(Formerly: Acts 1955, c.203, s.1.) As amended by P.L.252-1985, SEC.159.*

#### **IC 27-4-4-2**

##### **Definitions**

Sec. 2. As used in this chapter and unless a different meaning appears from the context:

(a) The term "insurer" means a company, firm, partnership, association, order, society, or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal, or interinsurers, or individual underwriters.

(b) The term "unauthorized foreign insurer" means an insurer organized under the laws of, or whose place of domicile is in any state of the United States other than this state or organized under the laws of, or whose place of domicile is in any territory or insular possession of the United States or the District of Columbia, and which insurer is not admitted, authorized, and licensed in accordance with the laws of this state to do and transact the business of insurance in the state of Indiana.

(c) The term "unauthorized alien insurer" means an insurer organized under the laws of, or whose place of domicile is in any country other than the United States or territory or insular possession thereof, or the District of Columbia, and which insurer is not admitted, authorized, and licensed in accordance with the laws of this state to do and transact the business of insurance in the state of Indiana.

*(Formerly: Acts 1955, c.203, s.2.) As amended by P.L.252-1985, SEC.160.*

### **IC 27-4-4-3**

#### **Acts constituting appointment of commissioner as attorney for service of process; methods of service**

Sec. 3. (a) Any of the following acts in this state, effected by mail, or otherwise, by an unauthorized foreign or alien insurer; (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (4) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the insurance commissioner of the state of Indiana and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(b) Such service of process shall be made by delivering to and leaving with the insurance commissioner of the state of Indiana, or in his office, two (2) copies thereof and the payment to him at the time of such service a fee as required under IC 27-1-3-15. The insurance commissioner shall forthwith mail by registered mail one (1) of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten (10) days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(c) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (b) of this section be valid if served upon any person within this state who, in this state on behalf of such insurer, is (1) soliciting insurance, or (2) making, issuing, or delivering any contract of insurance, or (3) collecting or receiving any premium, membership fee, assessment or other consideration for insurance; and a copy of such process is sent within ten (10) days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and



address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(e) Nothing in this section shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

*(Formerly: Acts 1955, c.203, s.3.) As amended by P.L.130-1994, SEC.38; P.L.116-1994, SEC.50.*

#### **IC 27-4-4-4**

##### **Deposit or bond; motion to quash service**

Sec. 4. (a) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit, or proceeding instituted against it, such unauthorized insurer shall:

- (1) deposit, with the clerk of the court in which such action, suit, or proceeding is pending, cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or
- (2) procure a certificate of authority to transact the business of insurance in this state.

(b) The court in any action, suit, or proceeding, in which service is made in the manner provided in section 3 of this chapter may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) and to defend such action.

(c) Nothing in subsection (a) is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service made in the manner provided in section 3 of this chapter on the ground either:

- (1) that such unauthorized insurer has not done any of the acts enumerated in section 3(a) of this chapter; or
- (2) that the person on whom service was made pursuant to section 3(c) of this chapter was not doing any of the acts therein enumerated.

*(Formerly: Acts 1955, c.203, s.4.) As amended by P.L.252-1985, SEC.161.*

#### **IC 27-4-4-5**

##### **Vexatious refusal to pay without reasonable cause; attorney's fees**

Sec. 5. In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty (30) days after demand

prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half per cent (12 1/2%) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars (\$25.00). Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

*(Formerly: Acts 1955, c.203, s.5.)*

#### **IC 27-4-4-6**

##### **Exclusions from act**

Sec. 6. The provisions of this chapter shall not apply to any action, suit, or proceeding against any unauthorized insurer arising out of any contract of:

- (1) reinsurance effectuated in accordance with the laws of Indiana;
- (2) aircraft insurance;
- (3) insurance on property or operations of railroads engaged in interstate commerce;
- (4) insurance against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside of this state; or
- (5) insurance against loss of or damage to any property having a permanent situs outside of this state;

where such contract contains a provision designating the department or the commissioner or a bona fide resident of the state of Indiana to be its true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract.

*(Formerly: Acts 1955, c.203, s.6.) As amended by P.L.252-1985, SEC.162.*

#### **IC 27-4-4-7**

##### **Construction**

Sec. 7. This chapter is declared to be in addition and supplemental to other laws of the state of Indiana and shall be construed accordingly.

*(Formerly: Acts 1955, c.203, s.7.) As amended by P.L.252-1985, SEC.163.*

#### **IC 27-4-4-8**

##### **Short title**

Sec. 8. This chapter may be cited as the Unauthorized Insurers Process Act.

*(Formerly: Acts 1955, c.203, s.9.) As amended by P.L.252-1985, SEC.164.*

## **IC 27-4-5**

### **Chapter 5. Unauthorized Insurers Act**

#### **IC 27-4-5-1**

##### **Purpose; legislative declaration**

Sec. 1. The purpose of this chapter is to subject certain insurers to the jurisdiction of the insurance commissioner and the courts of this state in suits by or on behalf of the state. The general assembly declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the general assembly provides methods in this chapter for substituted service of process upon such insurers in any proceeding, suit, or action in any court and substituted service of any notice, order, pleading, or process upon such insurers in any proceeding by the commissioner of insurance to enforce or effect full compliance with this title. In so doing, the state exercises its powers to protect residents of this state and to define what constitutes transacting an insurance business in this state, and also exercises powers and privileges available to this state by virtue of 15 U.S.C. 1011 through 1015, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

*(Formerly: Acts 1969, c.194, s.1.) As amended by P.L.252-1985, SEC.165.*

#### **IC 27-4-5-2**

##### **Prohibition of unauthorized insurance business; exceptions; business by mail; venue; validity of contract; right to defend; prerequisites to action**

Sec. 2. (a) It is a Class A infraction for an insurer to transact insurance business in this state, as set forth in subsection (b), without a certificate of authority from the commissioner. However, this section does not apply to the following:

- (1) The lawful transaction of surplus lines insurance.
- (2) The lawful transaction of reinsurance by insurers.
- (3) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
- (5) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the

laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.

(6) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargos, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

(7) Transactions in this state involving life insurance, health insurance, or annuities provided to religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions.

(8) Transactions in this state involving contracts of insurance not readily obtainable in the ordinary insurance market and issued to one (1) or more industrial insureds. For purposes of this section, an "industrial insured" means an insured:

(A) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly retained and continuously qualified insurance consultant;

(B) whose aggregate annual premium for insurance on all risks totals at least twenty-five thousand dollars (\$25,000);

(C) who has at least twenty-five (25) full-time employees;

(D) who, on or before February 1 (for the preceding six (6) month period ending December 31) and August 1 (for the preceding six (6) month period ending June 30) of each year, remits to the department an amount equal to two and one-half percent (2.5%) of all gross premiums upon all policies and contracts procured by the insured under this section, plus:

(i) ten percent (10%) of the amount due for the first month after the date specified in this clause, during which the amount described in this clause is not remitted in compliance with this clause; and

(ii) an additional one percent (1%) of the amount due for each additional month during which the amount due under this clause is unpaid; and

(E) who files with the department, with the amount remitted under clause (D), an affidavit specifying all transactions undertaken and policies and contracts procured during the preceding calendar year, including the following:

(i) The description and location of the insured property or risk and the name of the insured.

(ii) The gross premiums charged for the policy or contract.

(iii) The name and home office address of the insurer that issues the policy or contract and the kind of insurance affected.

(iv) A statement that the insured, after diligent effort, was

unable to procure from any insurer authorized to transact the particular kind of insurance business in Indiana the full amount of insurance coverage required to protect the insured.

(9) Transactions in Indiana involving the rendering of any service by any ambulance service provider and all fees, costs, and membership payments charged for the service. To qualify under this subdivision, the ambulance service provider:

(A) must have its ambulance service program approved by an ordinance of the legislative body of the county or city in which it operates; and

(B) may not offer any membership program that includes benefits exceeding one (1) year in duration.

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer constitutes the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all persons engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

(1) The making of or proposing to make, as an insurer, an insurance contract.

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

(3) The taking or receiving of any application for insurance.

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof.

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

(6) Acting as an agent for or otherwise representing or aiding on behalf of another person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or representing or assisting a person or an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subdivision does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of the employer.

(c)(1) The failure of an insurer transacting insurance business in

this state to obtain a certificate of authority does not impair the validity of any act or contract of such insurer and does not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority may maintain an action in any court of this state to enforce any right, claim, or demand arising out of the transaction of such business until such insurer obtains a certificate of authority.

(2) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract is liable to the insured for the full amount of the claim or loss in the manner provided by the insurance contract.

*(Formerly: Acts 1969, c.194, s.2.) As amended by Acts 1978, P.L.2, SEC.2720; P.L.161-1988, SEC.1; P.L.130-1994, SEC.39; P.L.116-1994, SEC.51; P.L.252-1995, SEC.2; P.L.11-2011, SEC.25.*

### **IC 27-4-5-3**

#### **Injunction**

Sec. 3. Whenever the commissioner believes, from evidence satisfactory to the commissioner, that any insurer is violating or about to violate the provisions of section 2 of this chapter, the commissioner may cause a complaint to be filed in the circuit or superior court to enjoin and restrain such insurer from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

*(Formerly: Acts 1969, c.194, s.3.) As amended by P.L.252-1985, SEC.166; P.L.255-1995, SEC.5.*

### **IC 27-4-5-4**

#### **Appointment of attorney for service of process; method of service**

Sec. 4. (a) Any act of transacting an insurance business as set forth in section 2 of this chapter by any unauthorized insurer is equivalent to and shall constitute an irrevocable appointment by such insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the secretary of state or his successor in office, to be the true and lawful attorney of such insurer upon whom may be served all lawful process in any action, suit, or proceeding in any court by the commissioner of insurance or by the state and upon whom may be served any notice, order, pleading, or process in any proceeding before the commissioner of insurance and which arises out of transacting an insurance business in this state by such insurer. Any act of transacting an insurance business in this state by any unauthorized insurer shall be signification of its agreement that any such lawful process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such

administrative proceeding before the commissioner of insurance so served shall be of the same legal force and validity as personal service of process in this state upon such insurer.

(b) Service of process in such action shall be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his office, two (2) copies thereof and by payment to the secretary of state of the fee prescribed by law. Service upon the secretary of state as such attorney shall be service upon the principal.

(c) The secretary of state shall forthwith forward by certified mail one (1) of the copies of such process or such notice, order, pleading, or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided:

(1) notice of such service and a copy of the court process or the notice, order, pleading, or process in such administrative proceeding are sent within ten (10) days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner of insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known place of business of the defendant in the court or administrative proceeding; and

(2) the defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in court proceeding or of the commissioner of insurance in administrative proceeding, showing compliance therewith are filed with the clerk of the court in which such action, suit, or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner of insurance may allow.

(d) No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the commissioner of insurance is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.

(e) Nothing in this section shall limit or affect the right to serve any process, notice, order, or demand upon any person or insurer in any other manner permitted by law.

*(Formerly: Acts 1969, c.194, s.4; Acts 1971, P.L.1, SEC.10.) As amended by P.L.252-1985, SEC.167.*

#### **IC 27-4-5-5**

##### **Prerequisites to pleading; deposit to secure payment of judgment; procuring certificate of authority; motion to quash**

Sec. 5. (a) Before any unauthorized insurer files or causes to be filed in any pleading in any court action, suit, or proceeding or in any notice, order, pleading, or process in such administrative proceeding before the commissioner instituted against such person or insurer, by services made as provided in section 4 of this chapter, such insurer shall either:

(1) deposit with the clerk in which such action, suit, or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding; or

(2) procure a certificate of authority to transact the business of insurance in this state.

In considering the application of an insurer for a certificate of authority, for the purposes of this section the commissioner need not assert the provisions of IC 27-1-20-12 against such insurer with respect to its application if he determines that such company would otherwise comply with the requirements for such certificate of authority.

(b) The commissioner of insurance, in any administrative proceeding in which service is made as provided in section 4 of this chapter, may in his discretion order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) and to defend such action.

(c) Nothing in subsection (a) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in section 4 of this chapter on the ground that such unauthorized insurer has not done any of the acts enumerated in section 2 of this chapter.

*(Formerly: Acts 1969, c.194, s.5.) As amended by P.L.252-1985, SEC.168.*

#### **IC 27-4-5-6**

##### **Enforcement of orders in domestic or foreign courts; definitions; list of reciprocal states; enforcement of foreign decrees; stay; fees**

Sec. 6. (a) The attorney general upon request of the commissioner may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

(b) The following definitions apply throughout this section:

(1) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of



decrees or orders in equity issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

(2) "Foreign decree" means any decree or order in equity of a court located in a "reciprocal state," including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

(3) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(c) The insurance commissioner of this state shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(d) A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit or superior court of this state. The clerk, upon verifying with the insurance commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a circuit or superior court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a circuit or superior court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a circuit or superior court of this state and may be enforced or satisfied in like manner.

(e) At the time of the filing of the foreign decree, the attorney general shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

(f) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the insurance commissioner of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the insurance commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

(g) No execution or other process for enforcement of a foreign decree filed under this section shall issue until 30 days after the date the decree is filed.

(h) If the defendant shows the circuit or superior court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(i) If the defendant shows the circuit or superior court any ground upon which enforcement of a decree of any circuit or superior court

of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(j) Any person filing a foreign decree shall pay to the clerk of court six dollars (\$6). Fees for docketing, transcription, or other enforcement proceedings shall be as provided for decrees of the circuit or superior court.

*(Formerly: Acts 1969, c.194, s.6.) As amended by P.L.1-1993, SEC.201.*

#### **IC 27-4-5-7**

##### **Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2728.)*

#### **IC 27-4-5-8**

##### **Short title**

Sec. 8. This chapter may be cited as the Uniform Unauthorized Insurers Act.

*(Formerly: Acts 1969, c.194, s.8.) As amended by P.L.252-1985, SEC.169.*

## **IC 27-4-6**

### **Chapter 6. Unauthorized Insurers False Advertising Process Act**

#### **IC 27-4-6-1**

##### **Purpose; liberal construction**

Sec. 1. (a) The purpose of this chapter is to subject to the jurisdiction of the insurance commissioner of this state and to the jurisdiction of the courts of this state insurers, not authorized to transact business in this state, which place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this chapter. In furtherance of such state interest, the legislature provides in this chapter a method of substituted service of process upon such insurers and declares that in so doing, it exercises its power to protect its residents and also exercises powers and privileges available to the state by virtue of 15 U.S.C. 1011 et seq., which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided in this chapter to be in addition to any other powers of this state.

(b) The provisions of this chapter shall be liberally construed.  
*(Formerly: Acts 1963, c.163, s.1.) As amended by P.L.252-1985, SEC.170.*

#### **IC 27-4-6-2**

##### **Definitions**

Sec. 2. When used in this chapter:  
"Commissioner" shall mean the commissioner of insurance of this state.  
"Residents" shall mean and include person, partnership, limited liability company, or corporation, domestic, alien, or foreign.  
*(Formerly: Acts 1963, c.163, s.2.) As amended by P.L.252-1985, SEC.171; P.L.8-1993, SEC.419.*

#### **IC 27-4-6-3**

##### **Advertising in violation of Unfair Trade Practice Act by unauthorized foreign or alien insurer; notice to insurer and supervisory official of domiciliary state**

Sec. 3. No unauthorized foreign or alien insurer of the kind described in section 1 of this chapter shall make, issue, circulate, or cause to be made, issued, or circulated, to residents of this state any estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine, or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any

contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of IC 27-4-1, and whenever the commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, he shall give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

*(Formerly: Acts 1963, c.163, s.3.) As amended by P.L.252-1985, SEC.172.*

#### **IC 27-4-6-4**

##### **Failure of unauthorized foreign or alien insurer to cease unlawful advertising after notice; action under Unfair Trade Practice Act**

Sec. 4. If after thirty (30) days following the giving of the notice mentioned in section 3 of this chapter such insurer has failed to cease making, issuing, or circulating such misrepresentations or causing the same to be made, issued, or circulated in this state, and if the commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated in section 5 of this chapter, he shall take action against such insurer under IC 27-4-1.

*(Formerly: Acts 1963, c.163, s.4.) As amended by P.L.252-1985, SEC.173.*

#### **IC 27-4-6-5**

##### **Acts of unauthorized foreign or alien insurer appointing commissioner as attorney for service of process; method of service**

Sec. 5. (a) Any of the following acts in this state, effected by mail or otherwise, by any such unauthorized foreign or alien insurer:

- (1) the issuance or delivery of contracts of insurance to residents of this state;
- (2) the solicitation of applications for such contracts;
- (3) the collection of premiums, membership fees, assessments or other considerations for such contracts; or
- (4) any other transaction of insurance business;

is equivalent to and shall constitute an appointment by such insurer of the commissioner of insurance, and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in section 3 of this chapter under the provisions of IC 27-4-1 or in any action, suit, or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices, or process is of the same legal force and validity as personal service of such statement

of charges, notices, or process in this state, upon such insurer.

(b) Service of a statement of charges and notices under IC 27-4-1 shall be made by any deputy or employee of the department of insurance delivering to and leaving with the commissioner or some person in apparent charge of his office, two (2) copies thereof. Service of process issued by any court in any action, suit, or proceeding to collect any penalty under IC 27-4-1 shall be made by delivering and leaving with the commissioner, or some person in apparent charge of his office, two (2) copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one (1) of the copies of such statement of charges, notices, or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices, and process so served. Such service of statement of charges, notices, or process shall be sufficient provided they shall have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance with this section are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

(c) Service of statement of charges, notices, and process in any such proceeding, action, or suit shall, in addition to the manner provided in subsection (b), be valid if served upon any person within this state who on behalf of such insurer is:

- (1) soliciting insurance;
- (2) making, issuing, or delivering any contract of insurance; or
- (3) collecting or receiving in this state any premium for insurance;

and a copy of such statement of charges, notices, or process is sent within ten (10) days thereafter by registered mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance with this section are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

(d) No cease or desist order or judgment by default or a judgment by confession under this section shall be entered until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(e) Service of process and notice under the provisions of this

chapter shall be in addition to all other methods of service provided by law, and nothing in this chapter shall limit or prohibit the right to serve any statement of charges, notices, or process upon any insurer in any other manner permitted by law.

*(Formerly: Acts 1963, c.163, s.5.) As amended by P.L.252-1985, SEC.174.*

#### **IC 27-4-6-6**

##### **Short title**

Sec. 6. This chapter may be cited as the Unauthorized Insurers False Advertising Process Act.

*(Formerly: Acts 1963, c.163, s.7.) As amended by P.L.252-1985, SEC.175.*

**IC 27-4-7**

**Repealed**

*(Repealed by P.L.1-1993, SEC.202.)*

**IC 27-4-8****Chapter 8. Foreign Plate Glass Insurers****IC 27-4-8-1****Capital requirements**

Sec. 1. Any person or persons, or any copartnership, company, or corporation organized under the laws of any other state than this state, or any foreign country, and engaged in the business of insuring plate glass, shall be allowed and permitted to do and transact such business in this state when such company is possessed of at least one hundred thousand dollars (\$100,000) of actual capital invested in the stock or bonds of some one (1) or more of the states of this Union or of the United States, or the bonds of some one (1) or more of the counties, cities, or towns of this state at the current value thereof, and when such company and its agents shall have fully complied with all the provisions and requirements of the laws of this state regulating foreign insurance companies, except so much thereof as requires a capital of two hundred thousand dollars (\$200,000); provided, that companies engaged in insuring plate glass and having less than two hundred thousand dollars (\$200,000) capital invested as required in this chapter shall not engage in or transact any other kind of business; provided, that whenever it shall appear to the insurance commissioner that any such company, having one hundred thousand dollars (\$100,000) capital, shall have been, directly or indirectly, doing business in this state prior to March 9, 1889, he shall not issue license to such company, or authorize it to do business in this state, until it shall have paid all taxes, fees, and penalties which should have been chargeable to it had it, during such time, been authorized to do business in this state, and not violated any of the laws governing foreign insurance companies.

*(Formerly: Acts 1889, c.199, s.1.) As amended by P.L.252-1985, SEC.179.*



## **IC 27-4-9**

### **Chapter 9. Recommendations to Senior Consumers**

#### **IC 27-4-9-1**

##### **"Securities commissioner"**

Sec. 1. As used in this chapter, "securities commissioner" refers to the commissioner appointed by the secretary of state under IC 23-19-6-1(a).

*As added by P.L.138-2005, SEC.2. Amended by P.L.27-2007, SEC.28.*

#### **IC 27-4-9-2**

##### **"Consumer"**

Sec. 2. As used in this chapter, "consumer" means an individual who receives a recommendation to purchase or exchange an annuity that results in the recommended purchase or exchange.

*As added by P.L.138-2005, SEC.2. Amended by P.L.131-2007, SEC.2.*

#### **IC 27-4-9-3**

##### **Suitability of annuity recommendations**

Sec. 3. (a) An insurance producer, or an insurer in a case in which an insurance producer is not involved, shall not recommend to a consumer the:

- (1) purchase of an annuity; or
- (2) exchange of an annuity that results in another insurance transaction;

that is unsuitable for the consumer.

(b) A determination regarding whether a purchase or an exchange under subsection (a) is unsuitable for a consumer must be made:

- (1) based on the facts disclosed by the consumer concerning the consumer's:
  - (A) investments and other insurance products; and
  - (B) financial situation and needs; and

- (2) according to the rule adopted under section 4 of this chapter.

*As added by P.L.138-2005, SEC.2. Amended by P.L.131-2007, SEC.3.*

#### **IC 27-4-9-4**

##### **Rules**

Sec. 4. (a) The department shall adopt rules under IC 4-22-2 to implement this chapter.

(b) The rules adopted under subsection (a) must set forth the duties that apply to an insurer or an insurance producer in determining whether reasonable grounds exist to believe that a recommendation to purchase or exchange an annuity is suitable for a consumer to whom the recommendation is made based on the facts disclosed by the consumer concerning the consumer's investments, other insurance products, and financial situation and needs.

*As added by P.L.138-2005, SEC.2. Amended by P.L.131-2007,*

*SEC.4.*

**IC 27-4-9-5**

**Violations**

Sec. 5. (a) Except as provided in subsection (b), a recommendation made in violation of section 3 of this chapter is an unfair method of competition or an unfair and deceptive act or practice under IC 27-4-1-4.

(b) A recommendation made in violation of section 3 of this chapter is not an unfair method of competition or an unfair and deceptive act or practice under IC 27-4-1-4 if the recommendation is made in compliance with the National Association of Securities Dealers Conduct Rules concerning suitability, as determined by the commissioner.

*As added by P.L.138-2005, SEC.2.*

**IC 27-4-9-6**

**Commissioner actions concerning compliance**

Sec. 6. (a) The commissioner may conduct an investigation, pursue an enforcement action, and take other official action that the commissioner considers appropriate to ensure compliance with section 3 of this chapter.

(b) With regard to a variable annuity, the commissioner may:

- (1) consult with the securities commissioner; and
- (2) use the resources of the securities commissioner;

in making a final determination regarding any issue concerning compliance with section 3 of this chapter.

(c) If the securities commissioner is informed of a violation or suspected violation of section 3 of this chapter or other insurance laws of the state, the securities commissioner shall timely advise the commissioner of the violation or suspected violation.

*As added by P.L.138-2005, SEC.2.*