



January 21, 2015

SENATE BILL No. 307

DIGEST OF SB 307 (Updated January 15, 2015 11:39 am - DI 55)

Citations Affected: IC 24-4.6; IC 24-4.7; IC 24-5; IC 25-1; IC 30-2.

Synopsis: Consumer protection. Amends the senior consumer protection act (act) as follows: (1) Expands the class of consumers covered by the act to include: (A) veterans; and (B) individuals with physical disabilities, developmental disabilities, or mental impairments; in addition to senior consumers. (2) Changes the term "senior consumer" to "protected consumer" to encompass the additional consumers covered. Amends the statute concerning telephone solicitations of consumers (Indiana's "do not call" law) to provide that a person may not provide substantial assistance or support to a telephone solicitor, a supplier, or a caller if the person knows or consciously avoids knowing that the telephone solicitor, supplier, or caller has violated the "do not call" law or the statute concerning the regulation of automatic dialing machines. Amends the statute concerning home improvement contracts to specify that: (1) an exterior home improvement includes lawn care, landscaping, snow removal, driveway sealing, tree trimming, and pest control services; and (2) a home improvement includes interior pest control services. Amends the statute concerning the regulation of automatic dialing machines to provide that the attorney general is not required to prove that a violation of the statute was knowing or intentional for a court to impose a civil penalty for the violation. Amends the statute concerning the investigation and prosecution of complaints concerning regulated occupations to add to the permissible reasons for disclosure of information concerning a complaint a disclosure that is made to a law enforcement agency that has or is reasonably believed to have
(Continued next page)

Effective: July 1, 2015.

**Bray, Glick, Broden, Merritt, Tomes,
Delph, Houchin, Randolph**

January 8, 2015, read first time and referred to Committee on Commerce & Technology.
January 20, 2015, amended, reported favorably — Do Pass.

SB 307—LS 6695/DI 101



Digest Continued

jurisdiction over a person or matter involved in the complaint. Amends the law concerning the payment of funeral or burial service expenses in advance of need to provide that "contract", for purposes of the law, includes an agreement for the issuance of a life insurance policy where: (1) the death benefit of the policy is or may be designated for use in the purchase of funeral or burial services or merchandise; and (2) the policy is intended to be an exempt resource for Medicaid qualification purposes. Provides that the issuer of a contract meeting this description is a "seller" for purposes of the law and that a contract meeting this description must satisfy certain statutory requirements.

SB 307—LS 6695/DI 101



January 21, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 307

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

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

1 SECTION 1. IC 24-4.6-6-1, AS ADDED BY P.L.250-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1. (a) This chapter shall be known and may be
4 cited as the senior, **veteran, or disabled** consumer protection act.
5 (b) This chapter does not apply to deception, intimidation, or other
6 exploitation of a **senior protected** consumer in relation to insurance
7 coverage or an insurance product that is regulated by the Indiana
8 department of insurance. A **senior protected** consumer who is a victim
9 of an act that is:
10 (1) described in section 4(a) or 4(b) of this chapter; and
11 (2) related to insurance coverage or an insurance product;
12 may report the act to the Indiana department of insurance for action by
13 the insurance commissioner under IC 27. If the insurance
14 commissioner determines that the person who committed the act is not
15 subject to regulation by the Indiana department of insurance, the
16 insurance commissioner shall immediately refer the **senior protected**

SB 307—LS 6695/DI 101



1 consumer to the attorney general and the **senior protected** consumer
 2 may pursue remedies available under this chapter.

3 (c) This chapter does not apply to the exploitation of a **senior**
 4 **protected** consumer in relation to securities fraud that is regulated by
 5 the secretary of state's office. A **senior protected** consumer who is a
 6 victim of an act that is:

7 (1) described in section 4(a) or 4(b) of this chapter; and

8 (2) related to the Indiana uniform securities act under IC 23-19;
 9 shall report the act to the secretary of state under IC 23-19. If the
 10 secretary of state's office determines the person who committed the act
 11 is not subject to the regulation of the secretary of state's office, the
 12 secretary of state's office shall immediately refer the **senior protected**
 13 consumer to the attorney general and the **senior protected** consumer
 14 may pursue remedies available under this chapter.

15 SECTION 2. IC 24-4.6-6-2, AS ADDED BY P.L.250-2013,
 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2015]: Sec. 2. (a) This chapter shall be liberally construed and
 18 applied to protect **senior protected** consumers.

19 (b) The purposes and policies of this chapter are to:

20 (1) simplify, clarify, and modernize the law concerning the
 21 ownership, control, and use of property or assets of **senior**
 22 **protected** consumers; and

23 (2) protect **senior protected** consumers from financial
 24 exploitation from persons, who by deception or intimidation,
 25 obtain control over the property or assets of a **senior protected**
 26 consumer.

27 SECTION 3. IC 24-4.6-6-3, AS ADDED BY P.L.250-2013,
 28 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2015]: Sec. 3. The following definitions apply throughout this
 30 chapter:

31 (1) "Deception" means:

32 (A) misrepresentation or omission of any material fact relating
 33 to the terms of a contract or agreement entered into with a
 34 **senior protected** consumer or to the existing or pre-existing
 35 condition of any of the property involved in such a contract or
 36 agreement; or

37 (B) the use or employment of any misrepresentation, false
 38 pretense, or false promise in order to induce, encourage, or
 39 solicit a **senior protected** consumer to enter into a contract or
 40 agreement.

41 (2) "Intimidation" means the conduct or communication by a
 42 person directed toward a **senior protected** consumer informing or



1 implying to the **senior protected** consumer that the **senior**
 2 **protected** consumer will be deprived of food and nutrition,
 3 shelter, prescribed medication, or medical care and treatment if
 4 the **senior protected** consumer does not comply with the person's
 5 demands.

6 (3) "Person" means an individual, a corporation, the state of
 7 Indiana or its subdivisions or agencies, a business trust, an estate,
 8 a trust, a partnership, an association, a nonprofit corporation or
 9 organization, a cooperative, or any other legal entity.

10 (4) "Person in a position of trust and confidence" means a person,
 11 in relation to a **senior protected** consumer, who:

12 (A) is a parent, spouse, adult child, or other relative by blood
 13 or marriage of the **senior protected** consumer;

14 (B) is a joint tenant or tenant in common with the **senior**
 15 **protected** consumer;

16 (C) has a legal or fiduciary relationship with the **senior**
 17 **protected** consumer;

18 (D) is a financial planning or investment professional; or

19 (E) is a paid or unpaid caregiver for the **senior protected**
 20 consumer.

21 (5) "**Senior "Protected** consumer" means **an individual who**
 22 **qualifies as any one (1) or more of the following:**

23 (A) An individual who is at least sixty (60) years of age.

24 (B) A veteran (as defined in IC 22-9-10-8).

25 (C) An individual with:

26 (i) a physical disability;

27 (ii) a developmental disability (as defined in
 28 IC 12-7-2-61); or

29 (iii) a mental impairment.

30 SECTION 4. IC 24-4.6-6-4, AS ADDED BY P.L.250-2013,
 31 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2015]: Sec. 4. (a) A person commits financial exploitation of
 33 a **senior protected** consumer when the person knowingly and by
 34 deception or intimidation obtains control over the property of a **senior**
 35 **protected** consumer or illegally uses the assets or resources of a **senior**
 36 **protected** consumer.

37 (b) The illegal use of the assets or resources of a **senior protected**
 38 consumer includes, but is not limited to, the misappropriation of those
 39 assets or resources by undue influence, breach of a fiduciary
 40 relationship, fraud, deception, extortion, intimidation, or use of the
 41 assets or resources contrary to law.

42 (c) Nothing in this section shall be construed to impose civil liability



1 on a person who has made a good faith effort to assist a **senior**
 2 **protected** consumer in the management of the **senior protected**
 3 consumer's property, but through no fault of the person has been unable
 4 to provide such assistance.

5 (d) It is not a defense in an action under this chapter that a person
 6 reasonably believed that the victim was not a **senior protected**
 7 consumer.

8 SECTION 5. IC 24-4.6-6-5, AS ADDED BY P.L.250-2013,
 9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2015]: Sec. 5. (a) A **senior protected** consumer who is a
 11 victim of an act described in section 4(a) or 4(b) of this chapter may
 12 bring an action against the person who commits the act.

13 (b) In an action brought against a person under this section, the
 14 court may order the person to:

15 (1) return property or assets improperly obtained, controlled, or
 16 used; and

17 (2) reimburse the **senior protected** consumer for any damages
 18 incurred or for the value of the property or assets lost as a result
 19 of the violation or violations of this chapter.

20 (c) In addition to the remedy provided in subsection (b), a court may
 21 order the following:

22 (1) For knowing violations committed by a person who is not in
 23 a position of trust and confidence:

24 (A) payment of two (2) times the amount of damages incurred
 25 or value of property or assets lost; and

26 (B) payment of a civil penalty not exceeding five thousand
 27 dollars (\$5,000).

28 (2) For knowing violations committed by a person in a position of
 29 trust and confidence:

30 (A) payment of treble damages; and

31 (B) payment of a civil penalty not exceeding ten thousand
 32 dollars (\$10,000).

33 (d) The court may award reasonable attorney's fees to a **senior**
 34 **protected** consumer that prevails in an action under this section.
 35 Actual damages awarded to a person under this section have priority
 36 over any civil penalty imposed under this chapter.

37 (e) The burden of proof in proving that a person committed financial
 38 exploitation of a **senior protected** consumer under section 4 of this
 39 chapter is by a preponderance of the evidence.

40 (f) The attorney general may bring an action to enjoin an alleged
 41 commission of financial exploitation of a **senior consumer one (1) or**
 42 **more protected consumers** and may petition the court to freeze the



1 assets of the person allegedly committing financial exploitation of a
 2 ~~senior consumer~~ **one (1) or more protected consumers** in an amount
 3 equal to but not greater than the alleged value of lost property or assets
 4 for purposes of restoring to the ~~victim~~ **affected protected consumers**
 5 the value of the lost property or assets. The burden of proof required to
 6 freeze the assets of a person allegedly committing financial exploitation
 7 of a **senior protected** consumer is by a preponderance of the evidence.
 8 In addition, the court may:

9 (1) issue an injunction;

10 (2) order the person to make payment of the money unlawfully
 11 received from the ~~senior consumer or senior protected~~
 12 consumers, to be held in escrow for distribution to the aggrieved
 13 ~~senior consumer or senior protected~~ consumers;

14 (3) for knowing violations, increase the amount of restitution
 15 ordered under subdivision (2) in any amount up to three (3) times
 16 the amount of damages incurred or value of property or assets
 17 lost;

18 (4) order the person to pay to the state the reasonable costs of the
 19 attorney general's investigation and prosecution related to the
 20 action;

21 (5) provide for the appointment of a receiver;

22 (6) for knowing violations by a person who is not in a position of
 23 trust and confidence, order the person to pay a civil penalty of up
 24 to five thousand dollars (\$5,000) per violation; and

25 (7) for knowing violations by a person in a position of trust and
 26 confidence, order the person to pay a civil penalty of up to ten
 27 thousand dollars (\$10,000) per violation.

28 (g) In an action under subsection (a) or (f), the court may void or
 29 limit the application of contracts or clauses resulting from the financial
 30 exploitation.

31 (h) In an action under subsection (a), upon the filing of the
 32 complaint or on the appearance of any defendant, claimant, or other
 33 party, or at any later time, the trial court, the supreme court, or the court
 34 of appeals may require ~~the any~~ plaintiff, defendant, claimant, or other
 35 party or parties to give security, or additional security, in a sum the
 36 court directs, to pay all costs, expenses, and disbursements that are
 37 awarded against that party or that the party may be directed to pay by
 38 any interlocutory order, by the final judgment, or on appeal.

39 (i) Any person who violates the terms of an injunction issued under
 40 subsection (f) shall forfeit and pay to the state a civil penalty of not
 41 more than fifteen thousand dollars (\$15,000) per violation. For the
 42 purposes of this section, the court issuing the injunction shall retain



1 jurisdiction, the cause shall be continued, and the attorney general
 2 acting in the name of the state may petition for recovery of civil
 3 penalties. Whenever the court determines that an injunction issued
 4 under subsection (f) has been violated, the court shall award reasonable
 5 costs to the state.

6 SECTION 6. IC 24-4.6-6-6, AS ADDED BY P.L.250-2013,
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2015]: Sec. 6. This chapter does not limit the rights or
 9 remedies that are otherwise available to a **senior protected** consumer
 10 under any other applicable provision of law.

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

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

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

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

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

34 SECTION 8. IC 24-5-11-2.5, AS ADDED BY P.L.82-2012,
 35 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2015]: Sec. 2.5. (a) As used in this chapter, "exterior home
 37 improvement" means any alteration, repair, replacement,
 38 reconstruction, or other modification made to the exterior of residential
 39 property, including **any alteration, repair, replacement,**
 40 **reconstruction, or other modification made to:**

41 (1) the exterior of any structure on or fixture or improvement to
 42 the property; or



- 1 **(2) the property's curtilage or grounds.**
 2 **(b) The term ~~also~~ includes:**
 3 **(1) the alteration, repair, replacement, reconstruction, or other**
 4 **modification of a residential roof system; and**
 5 **(2) any of the following services performed with respect to the**
 6 **property:**
 7 **(A) Lawn care.**
 8 **(B) Landscaping.**
 9 **(C) Snow removal.**
 10 **(D) Driveway sealing.**
 11 **(E) Tree trimming, other than tree trimming performed by**
 12 **an electric utility in accordance with 170 IAC 4-9.**
 13 **(F) Pest control.**

14 SECTION 9. IC 24-5-11-3, AS AMENDED BY P.L.82-2012,
 15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2015]: Sec. 3. (a) As used in this chapter, "home
 17 improvement" means any alteration, repair, replacement,
 18 reconstruction, or other modification of residential property.

- 19 (b) The term includes:
 20 **(1) an exterior home improvement; and**
 21 **(2) pest control services performed on the interior of any**
 22 **structure on or fixture or improvement to the property.**

23 SECTION 10. IC 24-5-11-7.5, AS ADDED BY P.L.82-2012,
 24 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2015]: Sec. 7.5. (a) As used in this chapter, "residential
 26 property" means real property that:

- 27 (1) contains one (1) to four (4) units; and
 28 (2) is used in whole or in part as a dwelling of a consumer.
 29 (b) The term includes:
 30 **(1) all fixtures to, structures on, and improvements to the real**
 31 **property; and**
 32 **(2) the property's curtilage or grounds.**

33 SECTION 11. IC 24-5-14-13 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. **(a)** A caller who
 35 violates this chapter commits a deceptive act that is actionable by the
 36 attorney general under IC 24-5-0.5-4 and that is subject to the remedies
 37 and penalties under IC 24-5-0.5-4(c), IC 24-5-0.5-4(d),
 38 IC 24-5-0.5-4(f), IC 24-5-0.5-4(g), and IC 24-5-0.5-8.

- 39 **(b) In an action filed under IC 24-5-0.5-4(c) for one (1) or more**
 40 **alleged violations of this chapter, if the court determines that a**
 41 **defendant has committed one (1) or more violations of this chapter,**
 42 **the court may order the defendant to pay a civil penalty under:**



1 (1) IC 24-5-0.5-8; or
 2 (2) IC 24-5-0.5-4(g);
 3 **for one (1) or more of the violations, as the court determines**
 4 **appropriate. Notwithstanding IC 24-5-0.5-4(g), the attorney**
 5 **general is not required to prove that a violation of this chapter was**
 6 **committed knowingly or intentionally for the court to order the**
 7 **payment of a civil penalty described in subdivision (1) or (2).**

8 SECTION 12. IC 25-1-7-1, AS AMENDED BY P.L.3-2014,
 9 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2015]: Sec. 1. The following terms are defined for this
 11 chapter:

12 (1) "Board" means the appropriate entity described in IC 25-0.5-8.

13 (2) "Director" refers to the director of the division of consumer
 14 protection.

15 (3) "Division" refers to the division of consumer protection, office
 16 of the attorney general.

17 **(4) "Law enforcement agency" has the meaning set forth in**
 18 **IC 35-47-15-2.**

19 ~~(4)~~ **(5)** "Licensee" means a person who is:

20 (A) licensed, certified, or registered by an entity described in
 21 IC 25-0.5-8; and

22 (B) the subject of a complaint filed with the division.

23 ~~(5)~~ **(6)** "Person" means an individual, a partnership, a limited
 24 liability company, or a corporation.

25 ~~(6)~~ **(7)** "Regulated occupation" means an occupation in which a
 26 person is licensed, certified, or registered by one (1) of the entities
 27 described in IC 25-0.5-8.

28 SECTION 13. IC 25-1-7-5, AS AMENDED BY P.L.3-2014,
 29 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2015]: Sec. 5. (a) Subsection (b)(1) does not apply to:

31 (1) a complaint filed by:

32 (A) a member of any of the entities described in IC 25-0.5-8;
 33 or

34 (B) the Indiana professional licensing agency; or

35 (2) a complaint filed under IC 25-1-5-4.

36 (b) Except as provided in section 3(b) **or 3(c)** of this chapter, the
 37 director has the following duties and powers:

38 (1) The director shall make an initial determination as to the merit
 39 of each complaint. A copy of a complaint having merit shall be
 40 submitted to the board having jurisdiction over the licensee's
 41 regulated occupation, that board thereby acquiring jurisdiction
 42 over the matter except as otherwise provided in this chapter.



- 1 (2) The director shall through any reasonable means notify the
 2 licensee of the nature and ramifications of the complaint and of
 3 the duty of the board to attempt to resolve the complaint through
 4 negotiation.
 5 (3) The director shall report any pertinent information regarding
 6 the status of the complaint to the complainant.
 7 (4) The director may investigate any written complaint against a
 8 licensee. The investigation shall be limited to those areas in which
 9 there appears to be a violation of statutes governing the regulated
 10 occupation.
 11 (5) The director has the power to subpoena witnesses and to send
 12 for and compel the production of books, records, papers, and
 13 documents for the furtherance of any investigation under this
 14 chapter. The circuit or superior court located in the county where
 15 the subpoena is to be issued shall enforce any such subpoena by
 16 the director.

17 SECTION 14. IC 25-1-7-10, AS AMENDED BY P.L.226-2011,
 18 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2015]: Sec. 10. (a) Except as provided in section 3(b) **or 3(c)**
 20 of this chapter, all complaints and information pertaining to the
 21 complaints shall be held in strict confidence until the attorney general
 22 files notice with the board of the attorney general's intent to prosecute
 23 the licensee.

24 (b) A person in the employ of the office of attorney general or any
 25 of the boards, or any person not a party to the complaint, may not
 26 disclose or further a disclosure of information concerning the
 27 complaint unless the disclosure is: ~~required:~~

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

33 SECTION 15. IC 30-2-13-4 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. As used in this
 35 chapter, "contract" means **either of the following:**

- 36 (1) A written agreement between a purchaser and a seller that:
 37 (1) (A) obligates the seller to provide prepaid services or
 38 merchandise, or both, for a named individual; and
 39 (2) (B) becomes irrevocable thirty (30) days after the written
 40 agreement is signed by the purchaser and seller.
 41 (2) **An agreement that:**
 42 (A) **is entered into after June 30, 2015; and**



- 1 **(B) provides for the issuance of a life insurance policy**
- 2 **under both of the following circumstances:**
- 3 **(i) The death benefit of the life insurance policy is or may**
- 4 **be designated for use in the purchase of services or**
- 5 **merchandise.**
- 6 **(ii) The life insurance policy is intended to be an exempt**
- 7 **resource for Medicaid qualification purposes.**

8 SECTION 16. IC 30-2-13-10 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. **(a)** As used in this
 10 chapter, "seller" means a person doing business as a sole proprietor, a
 11 firm, a limited liability company, a corporation, an association, or a
 12 partnership contracting to provide services or merchandise, or both, to
 13 a named individual.

14 **(b) The term includes the issuer of a contract described in**
 15 **section 4(2) of this chapter.**

16 SECTION 17. IC 30-2-13-12.5, AS AMENDED BY P.L.61-2008,
 17 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2015]: Sec. 12.5. **(a)** This section applies to the following
 19 contracts entered into or established under this chapter after June 30,
 20 1999:

- 21 (1) Contracts for prepaid services.
- 22 (2) Contracts for prepaid merchandise.
- 23 (3) Trusts or escrows established to hold consideration paid for
- 24 services or merchandise subject to a contract entered into under
- 25 this chapter.

26 **(4) Contracts described in section 4(2) of this chapter.**

27 **(b)** A contract between a purchaser and a seller must:

- 28 (1) specify that the consideration for the contract is:
- 29 (A) cash, payable either in a lump sum or in installments; or
- 30 (B) an insurance policy that is:
- 31 (i) newly issued in conjunction with and integral to the
- 32 contract;
- 33 (ii) issued previously in a transaction separate and distinct
- 34 from the contract; or
- 35 (iii) both.

36 If a contract is funded with an insurance policy, the ownership
 37 of the policy must be irrevocably assigned to a trustee, and the
 38 seller may not borrow against, pledge, withdraw, or impair the
 39 cash value of the policy;

40 (2) specify that only the purchaser, acting by written notice to the
 41 seller, may revoke the contract within thirty (30) days after the
 42 date the contract is signed by the purchaser and the seller and that



- 1 the contract becomes irrevocable upon the expiration of the thirty
2 (30) day period;
- 3 (3) specify that, if the contract is revoked, the seller shall refund
4 and return to the purchaser, without interest, the cash or insurance
5 policy used to fund the contract;
- 6 (4) specify that not more than thirty (30) days after the contract is
7 signed by the purchaser and the seller, the whole of the cash or
8 insurance policy serving as consideration for the contract must be
9 deposited into a trust or escrow authorized by subsection (c) or
10 (d). However, a seller may elect to serve as trustee of a previously
11 existing life insurance contract;
- 12 (5) except as provided in subsection (f), unconditionally require
13 that the seller shall deliver all services or merchandise, or both,
14 specified in the contract and receive as consideration for the
15 delivery of services or merchandise, or both, only the cash or
16 insurance policy held in trust or escrow without regard to the
17 solvency of the insurer or the adequacy or loss in value of any
18 cash deposit or insurance policy used to fund a contract;
- 19 (6) except as provided in subsection (f), prohibit a seller from
20 imposing additional charges to recover any shortage or difference
21 between the retail prices for services or merchandise, or both, in
22 effect on the date of delivery of the services or merchandise, or
23 both, and the value of the trust or escrow applicable to the
24 contract on the date of delivery;
- 25 (7) require that a seller accepting the transfer of a contract
26 permitted under section 13 of this chapter shall honor the
27 requirements and obligations of the contract;
- 28 (8) permit the seller to assess a finance charge on a contract sold
29 on an installment basis and require that the seller disclose to the
30 purchaser the applicable requirements of federal and Indiana law;
- 31 (9) provide that the contract must comply with the following
32 requirements:
- 33 (A) The contract must be made in a form that is:
- 34 (i) written in clear and understandable language; and
35 (ii) printed in a size and style of type that is easy to read.
- 36 (B) The contract must describe the services, merchandise, or
37 cash advance items being purchased. If the merchandise or
38 cash advance items include a vault (as defined in
39 IC 23-14-33-33) that:
- 40 (i) will be used to encase the remains of a deceased
41 individual; and
42 (ii) is not airtight and watertight;



- 1 the contract must include a written statement indicating that
 2 the vault is not airtight and watertight.
- 3 (C) The contract must identify the following by name, address,
 4 and telephone number:
- 5 (i) The seller.
 6 (ii) The purchaser.
 7 (iii) The contract beneficiary if the beneficiary is an
 8 individual other than the purchaser.
- 9 (D) The contract must contain the seller's certificate of
 10 authority number and the date of the contract.
- 11 (E) The contract must provide that if an item of the particular
 12 services or merchandise specified in the contract is
 13 unavailable at the time of delivery, the seller shall deliver
 14 services or merchandise similar in style, quality, and of equal
 15 value to the unavailable item in the place of the item.
- 16 (F) The contract must disclose the precise manner in which the
 17 contract is to be funded by:
- 18 (i) identifying the consideration for the contract;
 19 (ii) identifying the name, number, if known, and issuer of
 20 any insurance policy used to fund the contract; and
 21 (iii) including the identity and location of the trustee or
 22 escrow agent, acting as fiduciary, who is to hold the trust or
 23 escrow.
- 24 (G) The contract must disclose that the seller reserves the right
 25 to assess an extra charge for:
- 26 (i) transportation costs;
 27 (ii) services or merchandise incurred in the transport of
 28 human remains a distance greater than twenty-five (25)
 29 miles from the seller's place of business; and
 30 (iii) service charges necessarily incident to the transport of
 31 human remains and in excess of those service charges
 32 specified in the contract.
- 33 (H) The contract must disclose the following:
- 34 (i) The amount, if any, the seller has elected to receive under
 35 subsection (c)(1) or subsection (d)(6).
 36 (ii) That a commission or fee may be paid to the seller or the
 37 seller's agent on a contract funded under subsection
 38 (b)(1)(B)(i).
- 39 (10) specify that a purchaser has the unrestricted right to
 40 designate one (1) or more successor sellers to whom the contract
 41 may be transferred under section 13 of this chapter, but that such
 42 a transfer is effective only with the consent of the newly



1 designated seller and upon the fulfillment of the other
2 requirements of section 13 of this chapter;

3 (11) specify that if cash advance items are funded in the contract,
4 the seller agrees to deliver the cash advance items under one (1)
5 of the following alternatives:

6 (A) Delivery is unconditionally guaranteed at the option of the
7 seller.

8 (B) Delivery is conditionally guaranteed for a seller and will
9 be equal in value to the total value of the trust or escrow
10 account maintained for the purchaser multiplied by the
11 percentage of the total original contract price represented by
12 cash advance items;

13 (12) specify that a release from trust or escrow shall occur only
14 upon the seller's delivery of services or merchandise, or both;

15 (13) permit, at the option of the seller, the incorporation of the
16 trust or escrow language contained in subsection (c) or (d)
17 directly into the contract;

18 (14) prohibit the seller from charging any service, transaction, or
19 other type of fee or charge unless the fee is:

20 (A) authorized under subsections (c)(1) and (d)(6) and section
21 27 of this chapter; or

22 (B) included within the definitions contained in section 8 or
23 11.5 of this chapter.

24 (c) A trust account authorized and established under this chapter
25 must do all of the following:

26 (1) Be irrevocable and require either of the following:

27 (A) The seller deposit the insurance policy used to fund the
28 contract into the trust account. However, for contracts funded
29 after June 30, 1995, with a previously issued insurance policy,
30 the seller may serve instead of a trustee if the seller is qualified
31 to do so under section 11(c) of this chapter.

32 (B) The seller deposit the cash used to fund the contract into
33 the trust account. However, as consideration for the sale of the
34 contract and any expense incurred by the seller in conjunction
35 with the sale of the contract, the contract must permit the seller
36 to notify, within a ten (10) day period following the date the
37 contract becomes irrevocable, the trustee of its election to
38 receive only up to ten percent (10%) of the seller's original
39 contract price for services or merchandise, or both.

40 (2) Designate the seller as the beneficiary of the trust.

41 (3) Designate a trustee qualified under this chapter and authorize
42 the trustee to assess the charges authorized under section 18 of



- 1 this chapter.
- 2 (4) Require that a separate account be maintained in the name of
- 3 each purchaser.
- 4 (5) Require that any interest, dividend, or accumulation in the
- 5 account be reinvested and added to the principal.
- 6 (6) Permit the assets of the several, separate accounts to be
- 7 commingled for investment purposes.
- 8 (7) Require that on receipt of the seller's proof of delivery of
- 9 services or merchandise the trustee shall remit to the seller the
- 10 full amount in trust applicable to the purchaser's contract and all
- 11 of the accumulated interest.
- 12 (8) Permit the seller to retain the remaining amount if the amount
- 13 in the trust account is greater than the seller's total current retail
- 14 price of all services and merchandise subject to the contract at the
- 15 time of delivery of all services or merchandise subject to the
- 16 contract. However, in the case of a contract funded under
- 17 subsection (b)(1)(B)(ii), the seller may not retain the remaining
- 18 amount but must pay the remaining amount to the entity or
- 19 individual designated by the insured as the beneficiary of the
- 20 death benefit proceeds not later than sixty (60) days after the
- 21 receipt and deposit of the proceeds by the seller. The seller may
- 22 not qualify as a beneficiary of the remaining amount or the
- 23 insurance death benefit. In the case of all other contracts funded
- 24 under this chapter, the seller may opt to return the remaining
- 25 amount to the individual designated by the purchaser to receive
- 26 the remainder or to the purchaser's estate.
- 27 (d) An escrow account authorized and established under this chapter
- 28 must do all of the following:
- 29 (1) Be irrevocable and require that the seller deposit all cash or
- 30 the insurance policy used to fund the contract into the escrow
- 31 account.
- 32 (2) Designate the seller as the recipient of the escrow funds.
- 33 (3) Designate an escrow agent, acting as fiduciary, qualified under
- 34 this chapter to act as escrow agent acting as fiduciary and
- 35 authorize the escrow agent acting as fiduciary to assess the
- 36 charges authorized under section 18 of this chapter.
- 37 (4) Require that the escrow account be maintained in the name of
- 38 the seller and serve as a depository for all cash or insurance
- 39 policies used to fund contracts sold by the seller.
- 40 (5) Permit the investment of and commingling of cash for
- 41 investment purposes.
- 42 (6) Permit the seller to receive an administrative or service fee at



1 the option of the seller. The seller may opt to receive the fee after
 2 the day following the date the contract becomes irrevocable. The
 3 amount of the fee may not exceed ten percent (10%) of the seller's
 4 total contract price for services or merchandise or both.

5 (7) Require that on delivery of services or merchandise, the
 6 escrow agent shall remit to the seller an amount equal to:

7 (A) the seller's original retail price as set forth in the contract
 8 for the services or merchandise delivered; minus

9 (B) the amount, if any, received by the seller under subdivision
 10 (6).

11 (8) Permit the seller to receive monthly payments of the interest
 12 earned and the appreciation in the value of the escrow assets to
 13 the extent that the total value of the escrow after a payment
 14 authorized under this subdivision is not less than:

15 (A) the original contract value of all services or merchandise
 16 under the contracts, or parts of the contracts that remain
 17 undelivered; minus

18 (B) the amounts, if any, received by the seller under
 19 subdivision (6).

20 (e) A trust account or an escrow account established under this
 21 section must contain a concise written description of all the provisions
 22 of this chapter that apply to the account.

23 (f) A seller's guarantee of delivery of all services or merchandise
 24 subject to a contract sold by the seller or transferred to a seller is
 25 unconditional except in the instance of one (1) of the following
 26 circumstances:

27 (1) An installment contract funded with cash or an insurance
 28 policy issued in conjunction with the contract is guaranteed to the
 29 extent of the cash paid or death benefits available at the time of
 30 death of the individual for whom services or merchandise are to
 31 be provided.

32 (2) A contract funded with an insurance policy issued previously
 33 and not in conjunction with the contract is guaranteed to the
 34 extent of the death benefit proceeds available at the time of the
 35 individual for whom services or merchandise are to be provided.

36 (3) A contract funded with an insurance policy issued in
 37 conjunction with the contract, but having a limited or qualified
 38 death benefit period, is guaranteed to the extent of the death
 39 benefit proceeds available at the time of the death of the
 40 individual for whom services or merchandise are to be provided.

41 (4) A transportation expense incurred by the seller while
 42 transporting human remains a distance greater than twenty-five



1 (25) miles from the seller's place of business, plus any charge for
2 services or merchandise necessarily incident to the transport of
3 the human remains.
4 (5) The seller agrees to conditionally guarantee the delivery of
5 cash advance items under subsection (b)(11)(B).
6 In the instance of unguaranteed delivery, the seller may reduce the
7 value or number of the services or merchandise subject to the contract
8 or cash advance items delivered or deliver the services or merchandise
9 in full on the condition that the seller receives adequate consideration
10 to compensate the seller for the unguaranteed part of the contract.
11 (g) The entire value of an escrow or trust established under this
12 chapter may not be considered as a resource in determining a person's
13 eligibility for Medicaid under IC 12-15-2-17.
14 (h) This chapter does not prohibit a purchaser from immediately
15 making the trust or escrow required under this chapter irrevocable and
16 assigning ownership of an insurance policy used to fund a contract to
17 obtain favorable consideration for Medicaid, Supplemental Security
18 Income, or another public assistance program under federal or state
19 law.
20 (i) A seller may not accept or deposit into a trust or escrow account
21 cash, an insurance policy, or any other property as consideration for
22 services or merchandise to be provided in the future except in
23 conjunction with a contract authorized by this chapter.



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 307, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 9, after line 32, begin a new paragraph and insert:

"SECTION 15. IC 30-2-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. As used in this chapter, "contract" means **either of the following**:

- (1) A written agreement between a purchaser and a seller that:
 - (+) (A) obligates the seller to provide prepaid services or merchandise, or both, for a named individual; and
 - (-) (B) becomes irrevocable thirty (30) days after the written agreement is signed by the purchaser and seller.
- (2) **An agreement that:**
 - (A) **is entered into after June 30, 2015; and**
 - (B) **provides for the issuance of a life insurance policy under both of the following circumstances:**
 - (i) **The death benefit of the life insurance policy is or may be designated for use in the purchase of services or merchandise.**
 - (ii) **The life insurance policy is intended to be an exempt resource for Medicaid qualification purposes.**

SECTION 16. IC 30-2-13-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) As used in this chapter, "seller" means a person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership contracting to provide services or merchandise, or both, to a named individual.

(b) The term includes the issuer of a contract described in section 4(2) of this chapter.

SECTION 17. IC 30-2-13-12.5, AS AMENDED BY P.L.61-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12.5. (a) This section applies to the following contracts entered into or established under this chapter after June 30, 1999:

- (1) Contracts for prepaid services.
- (2) Contracts for prepaid merchandise.
- (3) Trusts or escrows established to hold consideration paid for services or merchandise subject to a contract entered into under this chapter.

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(4) Contracts described in section 4(2) of this chapter.

(b) A contract between a purchaser and a seller must:

(1) specify that the consideration for the contract is:

(A) cash, payable either in a lump sum or in installments; or

(B) an insurance policy that is:

(i) newly issued in conjunction with and integral to the contract;

(ii) issued previously in a transaction separate and distinct from the contract; or

(iii) both.

If a contract is funded with an insurance policy, the ownership of the policy must be irrevocably assigned to a trustee, and the seller may not borrow against, pledge, withdraw, or impair the cash value of the policy;

(2) specify that only the purchaser, acting by written notice to the seller, may revoke the contract within thirty (30) days after the date the contract is signed by the purchaser and the seller and that the contract becomes irrevocable upon the expiration of the thirty (30) day period;

(3) specify that, if the contract is revoked, the seller shall refund and return to the purchaser, without interest, the cash or insurance policy used to fund the contract;

(4) specify that not more than thirty (30) days after the contract is signed by the purchaser and the seller, the whole of the cash or insurance policy serving as consideration for the contract must be deposited into a trust or escrow authorized by subsection (c) or (d). However, a seller may elect to serve as trustee of a previously existing life insurance contract;

(5) except as provided in subsection (f), unconditionally require that the seller shall deliver all services or merchandise, or both, specified in the contract and receive as consideration for the delivery of services or merchandise, or both, only the cash or insurance policy held in trust or escrow without regard to the solvency of the insurer or the adequacy or loss in value of any cash deposit or insurance policy used to fund a contract;

(6) except as provided in subsection (f), prohibit a seller from imposing additional charges to recover any shortage or difference between the retail prices for services or merchandise, or both, in effect on the date of delivery of the services or merchandise, or both, and the value of the trust or escrow applicable to the contract on the date of delivery;

(7) require that a seller accepting the transfer of a contract



permitted under section 13 of this chapter shall honor the requirements and obligations of the contract;

(8) permit the seller to assess a finance charge on a contract sold on an installment basis and require that the seller disclose to the purchaser the applicable requirements of federal and Indiana law;

(9) provide that the contract must comply with the following requirements:

(A) The contract must be made in a form that is:

- (i) written in clear and understandable language; and
- (ii) printed in a size and style of type that is easy to read.

(B) The contract must describe the services, merchandise, or cash advance items being purchased. If the merchandise or cash advance items include a vault (as defined in IC 23-14-33-33) that:

- (i) will be used to encase the remains of a deceased individual; and
- (ii) is not airtight and watertight;

the contract must include a written statement indicating that the vault is not airtight and watertight.

(C) The contract must identify the following by name, address, and telephone number:

- (i) The seller.
- (ii) The purchaser.
- (iii) The contract beneficiary if the beneficiary is an individual other than the purchaser.

(D) The contract must contain the seller's certificate of authority number and the date of the contract.

(E) The contract must provide that if an item of the particular services or merchandise specified in the contract is unavailable at the time of delivery, the seller shall deliver services or merchandise similar in style, quality, and of equal value to the unavailable item in the place of the item.

(F) The contract must disclose the precise manner in which the contract is to be funded by:

- (i) identifying the consideration for the contract;
- (ii) identifying the name, number, if known, and issuer of any insurance policy used to fund the contract; and
- (iii) including the identity and location of the trustee or escrow agent, acting as fiduciary, who is to hold the trust or escrow.

(G) The contract must disclose that the seller reserves the right to assess an extra charge for:



- (i) transportation costs;
- (ii) services or merchandise incurred in the transport of human remains a distance greater than twenty-five (25) miles from the seller's place of business; and
- (iii) service charges necessarily incident to the transport of human remains and in excess of those service charges specified in the contract.

(H) The contract must disclose the following:

- (i) The amount, if any, the seller has elected to receive under subsection (c)(1) or subsection (d)(6).
- (ii) That a commission or fee may be paid to the seller or the seller's agent on a contract funded under subsection (b)(1)(B)(i).

(10) specify that a purchaser has the unrestricted right to designate one (1) or more successor sellers to whom the contract may be transferred under section 13 of this chapter, but that such a transfer is effective only with the consent of the newly designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

(A) Delivery is unconditionally guaranteed at the option of the seller.

(B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by the percentage of the total original contract price represented by cash advance items;

(12) specify that a release from trust or escrow shall occur only upon the seller's delivery of services or merchandise, or both;

(13) permit, at the option of the seller, the incorporation of the trust or escrow language contained in subsection (c) or (d) directly into the contract;

(14) prohibit the seller from charging any service, transaction, or other type of fee or charge unless the fee is:

(A) authorized under subsections (c)(1) and (d)(6) and section 27 of this chapter; or

(B) included within the definitions contained in section 8 or 11.5 of this chapter.

(c) A trust account authorized and established under this chapter must do all of the following:

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- (1) Be irrevocable and require either of the following:
 - (A) The seller deposit the insurance policy used to fund the contract into the trust account. However, for contracts funded after June 30, 1995, with a previously issued insurance policy, the seller may serve instead of a trustee if the seller is qualified to do so under section 11(c) of this chapter.
 - (B) The seller deposit the cash used to fund the contract into the trust account. However, as consideration for the sale of the contract and any expense incurred by the seller in conjunction with the sale of the contract, the contract must permit the seller to notify, within a ten (10) day period following the date the contract becomes irrevocable, the trustee of its election to receive only up to ten percent (10%) of the seller's original contract price for services or merchandise, or both.
- (2) Designate the seller as the beneficiary of the trust.
- (3) Designate a trustee qualified under this chapter and authorize the trustee to assess the charges authorized under section 18 of this chapter.
- (4) Require that a separate account be maintained in the name of each purchaser.
- (5) Require that any interest, dividend, or accumulation in the account be reinvested and added to the principal.
- (6) Permit the assets of the several, separate accounts to be commingled for investment purposes.
- (7) Require that on receipt of the seller's proof of delivery of services or merchandise the trustee shall remit to the seller the full amount in trust applicable to the purchaser's contract and all of the accumulated interest.
- (8) Permit the seller to retain the remaining amount if the amount in the trust account is greater than the seller's total current retail price of all services and merchandise subject to the contract at the time of delivery of all services or merchandise subject to the contract. However, in the case of a contract funded under subsection (b)(1)(B)(ii), the seller may not retain the remaining amount but must pay the remaining amount to the entity or individual designated by the insured as the beneficiary of the death benefit proceeds not later than sixty (60) days after the receipt and deposit of the proceeds by the seller. The seller may not qualify as a beneficiary of the remaining amount or the insurance death benefit. In the case of all other contracts funded under this chapter, the seller may opt to return the remaining amount to the individual designated by the purchaser to receive



the remainder or to the purchaser's estate.

(d) An escrow account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require that the seller deposit all cash or the insurance policy used to fund the contract into the escrow account.

(2) Designate the seller as the recipient of the escrow funds.

(3) Designate an escrow agent, acting as fiduciary, qualified under this chapter to act as escrow agent acting as fiduciary and authorize the escrow agent acting as fiduciary to assess the charges authorized under section 18 of this chapter.

(4) Require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or insurance policies used to fund contracts sold by the seller.

(5) Permit the investment of and commingling of cash for investment purposes.

(6) Permit the seller to receive an administrative or service fee at the option of the seller. The seller may opt to receive the fee after the day following the date the contract becomes irrevocable. The amount of the fee may not exceed ten percent (10%) of the seller's total contract price for services or merchandise or both.

(7) Require that on delivery of services or merchandise, the escrow agent shall remit to the seller an amount equal to:

(A) the seller's original retail price as set forth in the contract for the services or merchandise delivered; minus

(B) the amount, if any, received by the seller under subdivision (6).

(8) Permit the seller to receive monthly payments of the interest earned and the appreciation in the value of the escrow assets to the extent that the total value of the escrow after a payment authorized under this subdivision is not less than:

(A) the original contract value of all services or merchandise under the contracts, or parts of the contracts that remain undelivered; minus

(B) the amounts, if any, received by the seller under subdivision (6).

(e) A trust account or an escrow account established under this section must contain a concise written description of all the provisions of this chapter that apply to the account.

(f) A seller's guarantee of delivery of all services or merchandise subject to a contract sold by the seller or transferred to a seller is unconditional except in the instance of one (1) of the following



circumstances:

- (1) An installment contract funded with cash or an insurance policy issued in conjunction with the contract is guaranteed to the extent of the cash paid or death benefits available at the time of death of the individual for whom services or merchandise are to be provided.
- (2) A contract funded with an insurance policy issued previously and not in conjunction with the contract is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.
- (3) A contract funded with an insurance policy issued in conjunction with the contract, but having a limited or qualified death benefit period, is guaranteed to the extent of the death benefit proceeds available at the time of the death of the individual for whom services or merchandise are to be provided.
- (4) A transportation expense incurred by the seller while transporting human remains a distance greater than twenty-five (25) miles from the seller's place of business, plus any charge for services or merchandise necessarily incident to the transport of the human remains.
- (5) The seller agrees to conditionally guarantee the delivery of cash advance items under subsection (b)(11)(B).

In the instance of unguaranteed delivery, the seller may reduce the value or number of the services or merchandise subject to the contract or cash advance items delivered or deliver the services or merchandise in full on the condition that the seller receives adequate consideration to compensate the seller for the unguaranteed part of the contract.

(g) The entire value of an escrow or trust established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(h) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

(i) A seller may not accept or deposit into a trust or escrow account cash, an insurance policy, or any other property as consideration for



services or merchandise to be provided in the future except in conjunction with a contract authorized by this chapter."

and when so amended that said bill do pass.

(Reference is to SB 307 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 10, Nays 0.

