

Reprinted 3/78

FEB 28 1978

HOUSE FILE 2273

Commerce *Amend per 56120 Do pass 3/8 (p. 937)* By BAKER and SMALL

House File 2273

Commerce: Koogler, Chair; Brockett, Schroeder, Bina and West.

Passed House, Date 3-15-78 (p. 1015) Passed Senate, Date _____

Vote: Ayes 91 Nays 0 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act amending the laws applicable to accident and health
 2 insurance policies by restricting the sale of skilled nurs-
 3 ing care coverage and requiring that the insured be given
 4 thirty days after delivery of the policy within which to
 5 return the policy and obtain a refund of the premium paid.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HOUSE FILE 2273

H-5612

- 1 Amend House File 2273 as follows:
 2 1. Page 2, line 10, by striking the word
 3 "thirty" and inserting in lieu thereof "ten".
 4 2. Page 2, line 15, by striking the words
 5 "However, the".
 6 3. Page 2, by striking lines 16, 17 and 18.

H-5612 FILED *Adopted 5/15* BY COMMITTEE ON COMMERCE
 MARCH 9, 1978 *(p. 1014)* SMALL of Johnson, Chair

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1 Section 1. Section five hundred seven B point four
2 (507B.4), Code 1977, is amended by adding the following new
3 subsections:

4 NEW SUBSECTION. Selling, offering for sale, delivering
5 or issuing for delivery, or renewing in this state a policy
6 of accident and sickness insurance as defined in section five
7 hundred fourteen A point one (514A.1) of the Code which
8 contains any insurance or indemnity benefit, whether as primary
9 coverage or as supplemental coverage, for loss incurred as
10 a result of expenses for health care provided by a skilled
11 nursing facility as defined in subsection three (3) of section
12 one hundred thirty-five C point one (135C.1) of the Code.

13 NEW SUBSECTION. Selling, offering for sale, delivering
14 or issuing for delivery, or renewing in this state a policy
15 of accident and sickness insurance as defined in section five
16 hundred fourteen A point one (514A.1) of the Code which
17 contains any insurance or indemnity benefit, whether as primary
18 coverage or as supplemental coverage, for loss incurred as
19 a result of expenses for skilled nursing services rendered
20 at an intermediate care facility as defined in subsection
21 two (2) of section one hundred thirty-five C point one (135C.1)
22 of the Code, except when included in a policy which:

23 a. Provides an insurance or indemnity benefit which is
24 determined by the total amount of the expenses incurred by
25 the insured for care provided at the intermediate care
26 facility; and

27 b. Provides for payment of the insurance or indemnity
28 benefit irrespective of the nature of the care received and
29 irrespective of the person administering the care. Nothing
30 in this paragraph, however, shall be deemed to prohibit an
31 insurer from excluding from coverage under an intermediate
32 care facility policy any expenses incurred for the delivery
33 of goods or services which are not reasonably necessary in
34 rendering health care at an intermediate care facility, or
35 any portion of expenses for reasonably necessary goods or

1 services which under the particular circumstances is excessive
2 when compared with charges for the same or similar goods or
3 services provided at other intermediate care facilities in
4 this state.

5 Sec. 2. Section five hundred fourteen A point three
6 (514A.3), subsection one (1), Code 1977, is amended by adding
7 the following new lettered paragraph:

8 NEW LETTERED PARAGRAPH. A provision as follows:

9 RIGHT TO RETURN POLICY. The insured has the right, within
10 thirty days after receipt of this policy, to return it to
11 the company at its home office or branch office or to the
12 agent through whom it was purchased, and if so returned the
13 premium paid will be refunded and the policy will be void
14 from the beginning and the parties shall be in the same
15 position as if a policy had not been issued. However, the
16 right of the insured to return the policy under this paragraph
17 shall be extinguished upon the filing by the insured of a
18 claim under the policy and within the thirty-day return period.

19 (In addition to incorporating the foregoing provision into
20 the policy, the insurer shall deliver to the insured at the
21 time of delivery of the policy a duplicate statement of the
22 foregoing provision which shall be contained in conspicuous
23 print on a separate and otherwise blank sheet of paper.)

24 Sec. 3. The provisions of this Act shall apply to any
25 insurance policy which is delivered or issued for delivery
26 or renewed in this state on or after the effective date of
27 this Act.

28 **EXPLANATION**

29 This bill would amend the law with respect to accident
30 and sickness insurance policies as follows:

31 Section 1 provides that it is an unfair or deceptive act
32 or practice to sell policies providing primary or supplemental
33 benefits for health care rendered in a skilled nursing facility
34 as defined in section 135C.1 of the Code. Section 1 also
35 provides that it is an unfair or deceptive act or practice

1 to sell policies covering skilled nursing care in an
2 intermediate care facility as defined in section 135C.1 unless
3 included within a policy covering the costs of all care
4 provided by that facility.

5 Section 2 provides that every policy delivered or issued
6 for delivery or renewal in this state must give the insured
7 the right to return the policy within 30 days of delivery
8 and receive a refund of any premium paid. If returned, the
9 effect would be the same as if a policy had not been issued.
10 The statement of the right to return the policy is required
11 in the policy itself, and also must be given in a separate
12 and conspicuous writing delivered to the insured at the time
13 of delivery of the policy.

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HOUSE FILE 2273

H-5680

1 Amend House File 2273 as follows:

2 1. Page 2, by inserting after line 23 the
3 following:

4 "Sec. 3. Any policy of accident and sickness
5 insurance in effect as of the effective date of this
6 Act which contains any insurance or indemnity benefit,
7 whether as primary coverage or as supplemental coverage
8 for loss incurred as a result of expenses for health
9 care provided by a skilled nursing facility as defined
10 in subsection three (3) of section one hundred thirty-
11 five C point one (135C.1) shall be deemed to provide
12 like insurance or indemnity benefit for loss incurred
13 as a result of expenses for health care provided by an
14 intermediate nursing facility as defined in subsection
15 two (2) of section one hundred thirty-five C point one
16 (135C.1)."

H-5680 FILED *w/d 3/15 (1978)* BY SCHROEDER of Pottawattamie
MARCH 15, 1978

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LSB 3455H
lb/cj/23

HOUSE FILE 2273

Commerce
Palmer, Chairperson
Curtis
Bisenius

HOUSE FILE 2273

By BAKER and SMALL

(As Amended and Passed by the House)

Passed House, Date 5-12-78 (p. 3673) Passed Senate, Date 5-12-78 (p. 1507)

Vote: Ayes 87 Nays 0 Vote: Ayes 47 Nays 0

Approved June 13, 1978

A BILL FOR

1 An Act amending the laws applicable to accident and health
2 insurance policies by restricting the sale of skilled nurs-
3 ing care coverage and requiring that the insured be given
4 thirty days after delivery of the policy within which to
5 return the policy and obtain a refund of the premium paid.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HOUSE FILE 2273

S-5820

1 Amend House File 2273 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, line 5, by striking the words ", or
4 renewing".
5 2. Page 1, line 12, by inserting after the period
6 the following: "Provided, however, that this
7 subsection shall not apply to nor affect any insurance
8 or indemnity benefit offered in connection with
9 policies providing benefits which are supplemental
10 to the federal medicare program (title eighteen (XVIII)
11 of the Social Security Act)."
12 3. Page 1, line 14, by striking the words ", or
13 renewing".
14 4. Page 2, by inserting after line 4 the follow-
15 ing new paragraph:
16 "Provided, however, that this subsection shall
17 not apply to nor affect any insurance or indemnity
18 benefit offered in connection with policies providing
19 benefits which are supplemental to the federal medicare
20 program (title eighteen (XVIII) of the Social Security
21 Act)."

5900

S-5820 FILED *Adopted as amended* BY COMMITTEE ON COMMERCE
MAY 5, 1978 *by 5900 5/12 (1506)* EUGENE M. HILL, CHAIRPERSON

1 Section 1. Section five hundred seven B point four
2 (507B.4), Code 1977, is amended by adding the following new
3 subsections:

4 NEW SUBSECTION. Selling, offering for sale, delivering
5 or issuing for delivery, or renewing in this state a policy
6 of accident and sickness insurance as defined in section five
7 hundred fourteen A point one (514A.1) of the Code which
8 contains any insurance or indemnity benefit, whether as primary
9 coverage or as supplemental coverage, for loss incurred as
10 a result of expenses for health care provided by a skilled
11 nursing facility as defined in subsection three (3) of section
12 one hundred thirty-five C point one (135C.1) of the Code.

13 NEW SUBSECTION. Selling, offering for sale, delivering
14 or issuing for delivery, or renewing in this state a policy
15 of accident and sickness insurance as defined in section five
16 hundred fourteen A point one (514A.1) of the Code which
17 contains any insurance or indemnity benefit, whether as primary
18 coverage or as supplemental coverage, for loss incurred as
19 a result of expenses for skilled nursing services rendered
20 at an intermediate care facility as defined in subsection
21 two (2) of section one hundred thirty-five C point one (135C.1)
22 of the Code, except when included in a policy which:

23 a. Provides an insurance or indemnity benefit which is
24 determined by the total amount of the expenses incurred by
25 the insured for care provided at the intermediate care
26 facility; and

27 b. Provides for payment of the insurance or indemnity
28 benefit irrespective of the nature of the care received and
29 irrespective of the person administering the care. Nothing
30 in this paragraph, however, shall be deemed to prohibit an
31 insurer from excluding from coverage under an intermediate
32 care facility policy any expenses incurred for the delivery
33 of goods or services which are not reasonably necessary in
34 rendering health care at an intermediate care facility, or
35 any portion of expenses for reasonably necessary goods or

1 services which under the particular circumstances is excessive
2 when compared with charges for the same or similar goods or
3 services provided at other intermediate care facilities in
4 this state.

5 Sec. 2. Section five hundred fourteen A point three
6 (514A.3), subsection one (1), Code 1977, is amended by adding
7 the following new lettered paragraph:

8 NEW LETTERED PARAGRAPH. A provision as follows:

9 RIGHT TO RETURN POLICY. The insured has the right, within
10 ten days after receipt of this policy, to return it to the
11 company at its home office or branch office or to the agent
12 through whom it was purchased, and if so returned the premium
13 paid will be refunded and the policy will be void from the
14 beginning and the parties shall be in the same position as
15 if a policy had not been issued.

16 (In addition to incorporating the foregoing provision into
17 the policy, the insurer shall deliver to the insured at the
18 time of delivery of the policy a duplicate statement of the
19 foregoing provision which shall be contained in conspicuous
20 print on a separate and otherwise blank sheet of paper.)

21 Sec. 3. The provisions of this Act shall apply to any
22 insurance policy which is delivered or issued for delivery
23 or renewed in this state on or after the effective date of
24 this Act.

HOUSE FILE 2273

S-5900

1 Amend the amendment, S-5820, to House File 2273
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 1, by striking lines 3 through 21 and
5 inserting in lieu thereof the following:

6 "1. Page 1, line 12, by inserting after the period
7 the following: "Provided, however, that nothing
8 contained in this subsection shall be deemed to
9 prohibit the renewal of any existing insurance or
10 indemnity benefit contained in a policy which was
11 issued for delivery or delivered in this state prior
12 to the effective date of this Act if the benefit,
13 by the terms of the policy, is guaranteed by the
14 company to be renewable at the election of the
15 policyholder."

16 2. Page 2, by inserting after line 4 the follow-
17 ing new paragraph:

18 "Provided, however, that nothing contained in this
19 subsection shall be deemed to prohibit the renewal
20 of any existing insurance or indemnity benefit
21 contained in a policy which was issued for delivery
22 or delivered in this state prior to the effective
23 date of this Act if the benefit, by the terms of the
24 policy, is guaranteed by the company to be renewable
25 at the election of the policyholder."

S-5900 FILED *adopted 5/11/78* BY WILLIAM D. PALMER
MAY 11, 1978

SENATE AMENDMENT TO
HOUSE FILE 2273

H-6705

1 Amend House File 2273 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 1, line 12, by inserting after the period
4 the following: "Provided, however, that nothing
5 contained in this subsection shall be deemed to
6 prohibit the renewal of any existing insurance or
7 indemnity benefit contained in a policy which was
8 issued for delivery or delivered in this state prior
9 to the effective date of this Act if the benefit,
10 by the terms of the policy, is guaranteed by the
11 company to be renewable at the election of the
12 policyholder."

13 2. Page 2, by inserting after line 4 the follow-
14 ing new paragraph:

15 "Provided, however, that nothing contained in this
16 subsection shall be deemed to prohibit the renewal
17 of any existing insurance or indemnity benefit
18 contained in a policy which was issued for delivery
19 or delivered in this state prior to the effective
20 date of this Act if the benefit, by the terms of the
21 policy, is guaranteed by the company to be renewable
22 at the election of the policyholder."

H-6705 FILED
RECEIVED FROM SENATE
May 12, 1978

*House concurred 5/12
(p. 2672)*

M E M O R A N D U M

TO: Serge Garrison, Director, Iowa Legislative Service Bureau
FROM: Larry W. Burch, Legal Counsel, Iowa Legislative Service Bureau
SUBJECT: House File 2273 - Skilled nursing care insurance

INTRODUCTION

You have requested a summary of the above referenced subject, including an explanation of the original problem, the purpose of the bill, the viewpoint of the commissioner of insurance, and the effects of the bill.

House File 2273 was drafted by me at the request of Representative Keith Baker. Representative Arthur Small joined as a sponsor after the bill had been prepared for introduction. I have reviewed the file on LSB 3455H, my recollection of events, the legislative history of the bill, an attorney general's opinion, and documents given me by the department of insurance. The following is a summary of that information.

DISCUSSION

House File 2273 originated in my office on January 9, 1978. At that time Representative Baker related to me certain criticisms involving the sale in this state of skilled nursing care insurance coverage: First, the purported benefits of that coverage are overstated because of the limited number of skilled nursing care facilities in this state, and second, that certain high-pressure sales tactics were being used to market that insurance, and accident and health insurance in general. Based upon comments from constituents, Representative Baker had concluded that the sale of skilled nursing coverage was deceptive because the limited number of facilities often prevented the policy holder from benefiting from the coverage. Also, Mr. Baker had concluded that sales to the elderly of accident and health insurance, particularly when including skilled nursing coverage, often were accomplished through the use of tactics designed to prey upon the fear of the elderly that they cannot afford proper medical care for themselves.

Representative Baker and I discussed the possible solutions to those two problems, such as limiting the sale of skilled nursing coverage to those areas of the state where skilled nursing facilities exist, and requiring the signature of "neutral" witnesses on policy applications submitted by persons above a certain age limit.

Representative Baker believed that action during the 1978 legislative session was essential, and that the subject could be given more intense consideration after the pressures of the session subsided.

Following discussions and revisions, a bill was agreed to by the sponsor. It was introduced in the House as House File 2273, and was believed to contain the following:

1. A prohibition against the sale of insurance for skilled nursing care rendered in a skilled nursing facility, as defined in chapter 135C of the Code.
2. A prohibition against the sale of insurance for skilled nursing care rendered at an intermediate care facility, as defined in chapter 135C of the Code, except when the policy also provided general coverage for services received at an intermediate care facility.
3. A statutory requirement that a purchaser of an accident and health insurance policy have a period of thirty days after delivery of the policy in which to return the policy without cost; a thirty-day "cooling-off" or "free-look" period. This was similar to a privilege then being given by many insurance companies, although the industry standard was ten days rather than thirty days.

The bill was introduced and was assigned to the Commerce Committee on February 28, was favorably reported out of Committee on March 8, and was debated, amended and passed by the House on March 15. The House amendment to the bill reduced the "cooling-off" period to ten days, and eliminated a restriction upon an otherwise absolute right of the policyholder to return the bill within the ten-day period.

The bill was received by the Senate on March 16, was assigned to the Commerce Committee on March 20, was favorably reported out of Committee on May 5, and was debated, amended and passed by the Senate on May 12. The Senate amendment added language to exempt from the skilled nursing care provisions of the bill any existing policy if renewable at the option of the policyholder.

The House received the bill back from the Senate on May 12 and passed it as amended by the Senate on the same day. The bill was processed and sent to the Governor, who signed the bill June 13, 1978. The bill took effect July 1, 1978.

The Department of Insurance reviewed the provisions of the new law and issued Bulletin No. 78-1 (a copy of which is attached) stating the Department's interpretation of the requirements of the bill. I conferred with Mr. Bill Hager, Deputy Insurance Commissioner, for purposes of this report, and he states that insurers withdrew skilled nursing care benefits from policies sold after July 1 because their actuaries believed the potential liabilities of the companies were too great for the premium. The companies also began advising existing insureds that such coverage would not be renewed in policies unless renewal was guaranteed by the policy.

In August of this year an opinion of the Attorney General (Foudree to Miller, O.A.G. No. 78-8-17, August 25, 1978) declared the

Act to be ineffective in its entirety because the prohibitions contained in section 1 discriminate between skilled nursing facilities and intermediate care facilities, and between individual and group insurance policies, in a manner which violates the equal protection provisions of Article I, Section 6, of the Iowa Constitution.

Relying on that opinion, the Department of Insurance issued Bulletin No. 78-3 (a copy of which is attached), indicating that the Department would not enforce House File 2273, and encouraging insurers to continue skilled nursing care coverage.

During my conversation with Deputy Commissioner Hager I asked about the Department's view of the nature and extent of the problem in Iowa. Mr. Hager indicated that the Insurance Department first became involved in the subject matter during the last two months of 1977, after receiving several complaints which suggested that insurance companies were denying claims filed against skilled nursing coverage. Mr. Hager indicated that the problem appears to stem from rules adopted by the Department of Health in 1976 which tightened the requirements for skilled nursing facilities. As a result of those rules the number of skilled nursing facilities in the state substantially declined, reducing the ostensible value of skilled nursing care insurance.

Mr. Hager states that the need for legislation dealing with skilled nursing care insurance may be eliminated by an Administrative Rule which the Department has proposed. That Rule (a copy of which is attached) would require insurers writing skilled nursing care coverage to pay the benefit whether the care is rendered in a skilled nursing facility or in an intermediate care facility. He suggests that apparently is what the legislature intended to accomplish by section 1 of House File 2273.

CONCLUSION

The proposed rule appears to solve the problem relating to skilled nursing care insurance. It is noted, however, that House File 2273 also contains the mandatory ten-day cooling-off period for accident and health insurance policy sales. Because of the attorney general's opinion, the most appropriate action for the general assembly to take would be to repeal House File 2273 in its entirety, and to reenact a ten-day cooling-off period.

Mr. Hager stated that the Department would be happy to talk with Ms. Sukup or anyone else from her organization about the subject. He can be reached as follows:

Mr. William Hager, Deputy Commissioner
Iowa Department of Insurance
Lucas State Office Building
Des Moines, Iowa 50319
Tele: (515) 281-4033

Respectfully submitted,

LARRY W. BURCH
Legal Counsel

CONSTITUTIONAL LAW; EQUAL PROTECTION; INSURANCE. Skilled Nursing Care Coverage. H.F. 2273, 67th G.A. (1978). House File 2273, which makes the sale and renewal of accident and health insurance policies containing skilled nursing care benefits an unfair trade practice, violates the equal protection requirements of the Constitution of Iowa, article I, section 6, and is unconstitutional in its entirety. (Foudree to Miller, State Representative, 8-25-78). #78-8-17 8-25-78

August 25, 1978

The Honorable Kenneth D. Miller
RFD 1
Independence, Iowa 50644

Dear Representative Miller:

In your letter of July 25, 1978, you request an opinion on the validity of House File 2273 recently enacted by the 67th General Assembly.

You specifically ask about the constitutionality of the Act as to its effect on insurance policies providing skilled nursing care benefits, whether it invalidates insurance contracts on which such policies are based, and whether it is possible for insurance companies to continue those insurance policies pending enactment of an amendment to the law if such an amendment is necessary.

H.F. 2273 is entitled: "AN ACT AMENDING THE LAW APPLICABLE TO ACCIDENT AND HEALTH INSURANCE POLICIES BY RESTRICTING THE SALE OF SKILLED NURSING CARE COVERAGE AND REQUIRING THAT THE INSURED BE GIVEN THIRTY DAYS AFTER DELIVERY OF THE POLICY WITHIN WHICH TO RETURN THE POLICY AND OBTAIN A REFUND OF THE PREMIUM PAID." It was enacted into law on May 12, 1978 and was signed by the Governor on June 13, 1978. It became effective on July 1, 1978.

The Act contains three sections the first of which is divided into two subsections. Section 1 amends Iowa Code § 507B.4 (1977), the Unfair Trade Practices law, by adding two new subsections as additional unfair trade practices.

Section 1. Section five hundred seven B point four (507B.4), Code 1977, is amended by adding the following new subsections:

The first subsection provides that the following shall be an unfair trade practice:

NEW SUBSECTION. Selling, offering for sale, delivering or issuing for delivery, or renewing in this state a policy of accident and sickness insurance as defined in section five hundred fourteen

A point one (514A.1) of the Code which contains any insurance or indemnity benefit, whether as primary coverage or as supplemental coverage, for loss incurred as a result of expenses for health care provided by a skilled nursing facility as defined in subsection three (3) of section one hundred thirty-five C point one (135C.1) of the Code. Provided, however, that nothing contained in this subsection shall be deemed to prohibit the renewal of any existing insurance or indemnity benefit contained in a policy which was issued for delivery or delivered in this state prior to the effective date of this Act if the benefit, by the terms of the policy, is guaranteed by the company to be renewable at the election of the policyholder.

The second subsection of Section 1 provides that the following shall be an unfair trade practice:

NEW SUBSECTION. Selling, offering for sale, delivering or issuing for delivery, or renewing in this state a policy of accident and sickness insurance as defined in section five hundred fourteen A point one (514A.1) of the Code which contains any insurance or indemnity benefit, whether as primary coverage or as supplemental coverage, for loss incurred as a result of expenses for skilled nursing services rendered at an intermediate care facility as defined in subsection two (2) of section one hundred thirty-five C point one (135C.1) of the Code, except when included in a policy which:

a. Provides an insurance or indemnity benefit which is determined by the total amount of the expenses incurred by the insured for care provided at the intermediate care facility; and

b. Provides for payment of the insurance or indemnity benefit irrespective of the nature of the care received and irrespective of the person administering the care. Nothing in this paragraph, however, shall be deemed to prohibit an insurer from excluding from coverage under an intermediate care facility policy any expenses incurred for the delivery of goods or services which are not reasonably necessary in rendering health care at an intermediate care facility, or any portion of expenses for reasonably necessary goods or services which under the particular circumstances is excessive when compared with charges for the same or similar goods or services provided at other intermediate care facilities in this state.

Provided, however, that nothing contained in this subsection shall be deemed to prohibit the renewal of any existing insurance or indemnity benefit contained in a policy which was issued for delivery or delivered in this state prior to the effective date of this Act if the benefit, by the terms of the policy, is guaranteed by the company to be renewable at the election of the policyholder.

Section 2 of the Act amends Iowa Code § 514A.3, the Accident and Health Insurance law, and reads:

Sec. 2. Section five hundred fourteen A point three (514A.3), subsection one (1), Code 1977, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. A provision as follows:

RIGHT TO RETURN POLICY. The insured has the right, within ten days after receipt of this policy, to return it to the company at its home office or branch office or to the agent through whom it was purchased, and if so returned the premium paid will be refunded and the policy will be void from the beginning and the parties shall be in the same position as if a policy had not been issued.

(In addition to incorporating the foregoing provision into the policy, the insurer shall deliver to the insured at the time of delivery of the policy a duplicate statement of the foregoing provision which shall be contained in conspicuous print on a separate and otherwise blank sheet of paper.)

Section 3 of the Act provides:

Sec. 3. The provisions of this Act shall apply to any insurance policy which is delivered or issued for delivery or renewed in this state on or after the effective date of this Act.

For reasons set forth below, it is the opinion of the Attorney General that H.F. 2273, which makes the sale and renewal of accident and health insurance policies containing skilled nursing care benefits an unfair trade practice, violates the equal protection requirements of the Constitution of Iowa, article I, section 6, and is unconstitutional in its entirety.

We begin by recognizing that the Iowa Supreme Court has stated that, ordinarily, statutes regularly enacted by the legislature will be accorded a strong presumption of constitutionality and all reasonable intendments must be indulged in favor of the validity of legislation. One who challenges legislation on constitutional grounds has the burden of negating every reasonable basis upon which the statute may be sustained. Where the constitutionality of a statute is merely doubtful or fairly debatable, the courts will not interfere. Thus a statute will not be declared unconstitutional unless it clearly, palpably and without doubt infringes the constitution. Keasling v. Thompson, 217 N.W.2d 687, 689 (Iowa 1974), reaffirmed by the Court in Chicago Title Insurance Co. v. Huff, 256 N.W.2d 17, 25 (Iowa 1977).

The Iowa constitution, article I, section 6, puts substantially the same limitations on state legislation as does the equal protection clause of the fourteenth amendment to the United States Constitution. City of Waterloo v. Selden, 251 N.W.2d 506, 509 (Iowa 1977); Graham v. Worthington, 259 Iowa 845, 863, 146 N.W.2d 626, 638 (1966). These two set out substantially the same safeguards. State v. Books, 225 N.W.2d 322, 323 (Iowa 1975). There is considerable case law on the subject of equal protection, but the general principles applied in any equal protection analysis have been frequently reiterated by both the United States and the Iowa Supreme Court. The focus of any equal protection analysis is

always the classification which a statute makes. Any classification is a legislative discrimination, and the legislature is accorded wide discretion in defining classes when a statute involves a categorization of persons or things. Chicago Title Insurance Co. v. Huff, 256 N.W.2d at 28. The only question is whether it is permissible under the constitution. If a statute involves neither a suspect classification (one drawn upon inherently suspect distinctions such as sex, race, religion, or alienage) nor a fundamental right, then it is subject to the traditional equal protection analysis. City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976); Frontiero v. Richardson, 411 U.S. 677, 681 (1976); State v. Wehde, 258 N.W.2d 347, 352 (Iowa 1977).

The traditional equal protection test consists of basically three elements. When examining a classification under that test, "[t]he only constitutional requirement is that such a classification is a reasonable one, operates equally on all within the class, and bears logical relationship to the purpose to be accomplished." State v. Robbins, 257 N.W.2d 63, 67 (Iowa 1977). These elements have been variously stated and developed throughout numerous Iowa cases often with reference to what the United States Supreme Court has said. In Becker v. Board of Education of Benton Co., 258 Iowa 277, 282, 138 N.W.2d 909, 912 (1965), the Iowa Court stated:

The federal court cases establish the general rule that the equal protection clause of Amendment 14 does not take from the state the power to classify in the adoption of public laws, but permits the exercise of a wide scope of discretion in that regard. Legislation will be held void only when it is without reasonable basis and therefore purely arbitrary. The equal protection clause goes no further than to prohibit invidious discrimination. . . .

This court has adopted and consistently applied the same general rule.

"The general rule is that if there is any reasonable ground for the classification and it operates equally upon all within the same class, there is uniformity in the constitutional sense." Collins v. State Board of Welfare, 248 Iowa 369, 375, 81 N.W.2d 4, 7 (1957). "All persons need not be treated alike to meet constitutional standards of equal protection. It is enough if all members of the same class are treated equally. Of course, the classification itself must be reasonable." Hack v. Auger, 228 N.W.2d 42, 43 (Iowa 1975). "If a classification is reasonable and operates equally upon all within the class, it is a valid classification." Keasling v. Thompson, 217 N.W.2d at 689. "The constitutional equal protection safeguard requires that the line drawn be a rational one, and that there be nondiscriminatory application of the law within the class established." Brightman v. Civil Service Commission of Des Moines, 204 N.W.2d 588, 591 (Iowa 1973). The third element has also been relied on by the Iowa Court along with the first two: "[S]tates are accorded wide latitude in regulating local affairs, and allowed to create statutory discriminations so long as the classifications drawn are rationally related to a legitimate state interest." State v. Wehde, 258 N.W.2d at 352. "The statute must be sustained unless its classifications are patently arbitrary and bear no rational relationship to a legitimate governmental interest, or defendant has negated every conceivable basis which might support the classification." Id.

Under that test the classification must be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate governmental interest. . . . It does not deny equal protection simply because in practice it results in some inequality; practical problems of government permit rough accommodations; and the classification will be upheld if any state of facts reasonably can be conceived to justify it.

Lunday v. Vogelmann, 213 N.W.2d 904, 907 (Iowa 1973). In summary, then, there must be some reasonable basis for a classification; once a classification is made by a statute it must treat all within each class equally; and finally, a classification must be rationally related to the purpose to be accomplished by the statute, i.e. to some legitimate governmental interest.

I. Upon close examination, H.F. 2273 appears to make several classifications. In Section 1 of the Act, the first subsection prohibits the selling or renewing of any insurance policy, as defined in Iowa Code § 514A.1 (1977), which provides for loss incurred as a result of expenses for health care provided by a skilled nursing facility (SNF). The second subsection also prohibits selling or renewing any such policy for loss incurred as a result of expenses for skilled nursing services rendered at an intermediate care facility (ICF) unless such policy also meets additional requirements as set forth in paragraphs 'a' and 'b' of that subsection. Thus, the Act first classifies by distinguishing between accident and health insurance policies pertaining to SNFs and accident and health policies pertaining to ICFs.

This classification, partly by operation of the Act and partly by the Act's definitions, results in two additional classifications. By distinguishing between accident and health policies pertaining to SNFs and those pertaining to ICFs, the Act thereby makes a classification of SNFs and ICFs for purposes of the Act. Thus, an SNF is to be distinguished from an ICF for the purpose of selling or renewing certain accident and health insurance. Secondly, present or potential SNF insureds (patients) are distinguished from present or potential ICF insureds (patients).

By totally prohibiting insurance to cover the cost of health care in an SNF, the statute amounts to an economic regulation. In this regard, the Iowa Supreme Court has stated "[t]he right to operate a legitimate business is one which the state may regulate but may not prohibit or unreasonably restrict. We have often so held." Central States Theatre Corp. v. Sar, 245 Iowa 1254, 1260, 66 N.W.2d 450, 453 (1954). "It is true the police power of the state permits the licensing and regulation of legitimate businesses where necessary for the public good. But this regulation must not be capricious, arbitrary, or unreasonable. It must have some relation to the general welfare, and it may not ordinarily go to the extent of entire prohibition of operation of the business." Id., 66 N.W.2d at 453-54. The Iowa Court, in City of Waterloo v. Selden, 251 N.W.2d at 509, relied on the language of the U.S. Supreme Court in City of New Orleans v. Dukes, 427 U.S. at 303-04, which stated:

¹There is no statutory definition of "skilled nursing services." We assume, looking at the statute on its face, that the legislature intended the broader term "health care" to include skilled-nursing-type care.

When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. . . . States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. . . . Legislatures may implement their program step by step. . . . In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines . . . ; in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.

The Iowa Court later explained that "Central States Theatre significantly accorded recognition to the fact that our legislature may not ordinarily prohibit the operation of a business but is free to do so if such forbiddance has 'some relation to the general welfare'." Chicago Title Insurance Co. v. Huff, 256 N.W.2d at 24. "Pursuing the subject further, it is apparent Central States Theatre recognized the right vested in our state legislature to prohibit any business venture deemed inimical to general welfare." Id. Thus where a business endeavor is found to be essentially injurious to public welfare, it may be prohibited. See State ex rel. Turner v. Koscot Interplanetary, Inc., 191 N.W.2d 624 (Iowa 1971).

The question, then, is whether this economic regulation is constitutionally permissible. Applying the tests already set forth, we believe the classification is not rationally related to any legitimate government interest or purpose. Iowa has no legislative history, and it is therefore necessary to look to the statute itself to discern any legislative purpose. In doing so, we are unable to find any purpose of H.F. 2273 other than that of restricting the sale of insurance which covers loss due to the cost of skilled nursing care by treating such insurance as an unfair trade practice. It is therefore reasonable to assume the legislature, by amending Iowa Code § 507B.4 (1977), decided the sale of skilled nursing care benefits constitutes an unfair trade practice. In the exercise of its judgment the legislature is accorded broad discretion in classifying, and the courts are unwilling to judge the merits of legislation. City of New Orleans v. Dukes, 427 U.S. at 303; Lee Enterprises, Inc. v. Iowa Tax Commission, 162 N.W.2d 730, 754 (Iowa 1969). However, a classification must not be arbitrary, and its means must be related to its objectives. Chicago Title Insurance Co. v. Huff, 256 N.W.2d at 28.

We believe the classifications of the Act as outlined above are without a reasonable basis and have no rational relation to accomplishing its purpose. We can see no reasonable basis for distinguishing between SNF insurance policies and ICF policies if the object is to restrict the sale of skilled nursing care coverage as an unfair trade practice. If it is a mischief for one, why is it not a mischief for the other? Why is it that SNF policies under the Act cannot be sold or renewed and are treated as an unfair trade practice while ICF policies can be sold and are not treated as an unfair trade practice if additional criteria are met? We can find no rational basis for allowing one to be sold under certain criteria and not the other. If the sale of such insurance is an evil to be restricted, why may it be sold or renewed only with respect to ICFs?

Normally there is a basis for distinguishing between SNFs and ICFs since the two are different entities as defined by Iowa law. Nevertheless, we see no reason for distinguishing between the two for the purpose of this Act. A classification may be valid for one purpose and not another. Dickinson v. Porter, 240 Iowa 393, 401, 35 N.W.2d 66, 72 (1948). Here, we cannot see that the classification serves any governmental purpose or interest. Under the Act, SNFs are unable to have patients covered by the specified insurance for any of the care they provide (including skilled nursing services) while ICFs may have patients covered by such insurance for skilled nursing care if those insurance policies meet certain conditions. It does not require much imagination to see that the Act will have a detrimental economic impact on SNFs, and if this is to be permitted there must be some rational basis for doing so. A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U.S. 459, 461-62 (1937). "[M]ere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any basis.' [citation omitted]" Id. at 462. In the present case, assuming the purpose to be accomplished is to protect the public by declaring the sale of skilled nursing care benefits to be an unfair trade practice, there is no reasonable basis for treating SNFs differently from ICFs for the purpose of selling or renewing such insurance. These two entities are treated differently when they are offering the same product - skilled nursing care.

In addition, we are unable to see how treating present or potential SNF insureds (patients) differently from present or potential ICF insureds (patients) accomplishes any government interest by protecting the public welfare. Those in the first category are simply unable to obtain skilled nursing care insurance as defined by the Act, while those in the second class may obtain such insurance when the policies meet certain criteria. Here, too, the classification is arbitrary and fails to meet the rational-relation test. Persons in the first class are denied equal protection of the laws.

II. There is an additional element to be considered in light of what has been said thus far. H.F. 2273, as it is intended to be applied, also distinguishes between individual accident and health policies and group accident and health policies and, hence, between individuals who are insureds or potential insureds and persons in groups who are insureds or

²It could conceivably be argued that because an ICF policy has the added criteria as required by paragraphs 'a' and 'b' of the second subsection that this makes the sale or renewal of such a policy no longer something to be considered an unfair trade practice. However, there is no reason for declaring it an unfair trade practice when an individual accident and health insurance policy providing skilled nursing care benefits, which does not meet the additional criteria of the second subsection, is sold with respect to an ICF while at the same time it is not an unfair trade practice if a group accident and health policy providing such benefits is sold respecting an ICF. That is, a group policy may not meet these additional criteria and yet it would not be an unfair trade practice for it to be sold or renewed. See part II, infra.

potential insureds.³ Individual insureds or potential insureds will no longer be able to obtain insurance to cover the cost of skilled nursing care in an SNF while those in groups will be free to do so. As a practical matter, the Act will most likely force individuals in SNFs to purchase group policies to obtain skilled nursing care benefits, and it may not always be possible for elderly persons to do so. This is an additional burden on them which should be recognized. (There may also be many individuals who will be unable to obtain such insurance coverage for skilled nursing care in ICFs as well, although the statute does permit this when the policies conform to certain criteria as noted.)

This particular distinction results because the statute specifically and by definition limits its scope to accident and health insurance policies as defined by Iowa Code § 514A.1 (1977). That section provides: "The provisions of this chapter shall apply to all individual policies of such accident and sickness insurance. . ." (Emphasis added.) The legislature could have chosen to apply the Act to "accident and health insurance," but it instead deliberately limited it to individual accident and health insurance by twice referring to Section 514A.1. Section 1 of H.F. 2273 proclaims that it amends Iowa Code Chapter 507B, the Unfair Trade Practices law. At the same time, by its definition of insurance, the Act is limited to Section 514A.1 insurance as already noted. Chapter 507B applies to all insurance policies, both group and individual; Chapter 514A applies only to individual accident and health insurance policies. (Group accident and health policies are regulated by Chapter 509 of the Code.) Thus, to say the Act applies to all insurance policies would require ignoring the deliberate reference to Section 514A.1. The only way to construe the two by giving effect to both is to interpret the Act as meaning only individual accident and health insurance policies are contemplated as falling within the ambit of unfair trade practices.

Because the statute amends Iowa Code § 507B.4, the result is that the legislature has declared it an unfair trade practice when an individual policy is involved, but it is not an unfair trade practice when a group policy is being sold or renewed. If the sale or renewal of insurance policies covering loss due to costs of skilled nursing care is an evil to be prohibited for the protection of the public welfare when offered to individuals, we can see no reason for allowing it to be offered by insurers in the form of group policies. In other words, while a classification which distinguishes between group insurance and individual insurance may have a reasonable basis, we believe such a classification has no reasonable basis when viewed in light of the assumed purpose of the Act.

H.F. 2273 is clearly under-inclusive. Equal protection requires that all persons similarly situated be treated similarly. The legislature can make classifications in its attempts to eliminate public mischiefs, provided such classifications include all persons having a similar relationship to the law's purpose. "A classification denies equal protection unless it includes all who are similarly situated and none who are not. That is, it is unreasonable if it is either under-inclusive or over-inclusive." Keasling v. Thompson,

³There is apparently no real distinction between companies which write individual accident and health policies and companies which offer group accident and health policies because essentially the same companies can write both types. See Iowa Code §§ 509.5 and 514A.1 (1977). Therefore it is doubtful that the statute denies insurance companies equal protection. Nevertheless, it should be pointed out that companies can continue to write skilled nursing care policies by writing group policies.

217 N.W.2d at 701 (dissent). See generally Joseph Tussman and Jacobus tenBroek, "The Equal Protection of the Law," 37 Cal. L. Rev. 341 (1949), which the Iowa Court took note of in Chicago and Northwestern Railway Co. v. Fachman, 255 Iowa 989, 997, 125 N.W.2d 210, 214 (1963). There, the Court said:

It is often said a reasonable classification is one which includes all who are similarly situated, and none who are not.

However, as pointed out in the California Law Review article, supra, we must also look beyond the classification to the purpose of the law. Therefore, a reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law, which may be either the elimination of a public "mischief" or the achievement of some positive public good.

Id. at 214-15. The difficulty with H.F. 2273 arises due to the trait selected by the legislature. A trait is the legislative definition of a classification's characteristics. When the trait is viewed in relation to the purpose of the Act, the unreasonableness of the classification scheme under H.F. 2273 becomes apparent. H.F. 2273, in its classification, includes all individual accident and health insurance policies but excludes all group accident and health policies. In this regard the Iowa Supreme Court, in the early case of State v. Garbroski, 111 Iowa 496, 498-99, 82 N.W. 959, 960 (1900), set out the requirements for a statute's ambit:

'Not only must it [legislation] treat alike, under the same conditions, all who are brought within its influence, but in its classification it must bring within its influence all who are under the same conditions.' [Quoting the Minnesota Supreme Court.] . . . 'The true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as a basis of classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be a substantial distinction, having reference to the subject-matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.' [Quoting the New Jersey Supreme Court. Emphasis added.]

There exists no observable reasonable basis upon which the legislature could conclude that individual accident and health insurance policies are any greater an evil to be restricted than are group accident and health insurance policies which are excluded from coverage under the Act. "The classification should be based upon some apparent natural reason, some reason suggested by necessity, such as difference in situation and circumstances of the subjects, placed in the one class or the other as suggest the necessity or propriety of discrimination with respect to them." Dunahoo v. Huber, 185 Iowa 753, 756, 171 N.W. 123, 123-24 (1919), reaffirmed by Chicago and Northwestern Railway Co. v. Fachman, 125 N.W.2d at 214. The Court in Fachman noted that, "Where the evil to be remedied, or the

economic benefits to be realized, relates to members of one class quite as well as to another, such a classification would be unwarranted." Id. at 215 (emphasis added). See also Sperry & Hutchinson Co. v. Hoegh, 246 Iowa 9, 19, 65 N.W.2d 410, 416 (1954). The omission of group accident and health insurance policies in H.F. 2273 is a classic example of under-inclusiveness under the Tussman-tenBroek analysis. Insofar as protecting the public with respect to the issuance of health care policies containing skilled nursing benefits is concerned, no discrimination in the availability of individual and group policies seems warranted.

Language relied on by the Iowa Supreme Court, when applied here, leaves no doubt that the Act violates the equal protection requirements of the constitution. The Court has said:

[B]ut where the evil to be remedied relates to members of one class quite as well as to another and is quite as obnoxious to good morals, such a classification would be unwarranted. The [equal protection] section of the Constitution quoted exacts that the General Assembly shall not grant to any class of citizens, privileges and immunities which upon the same terms shall not equally belong to all citizens, and this necessarily includes any class in which the citizens may be divided.

Dunahoo v. Huber, 185 Iowa 753, 756, 171 N.W. 123, 124 (1919), also quoted by State v. Books, 225 N.W.2d 322, 324 (Iowa 1975). The next year in Redmond v. Carter, 247 N.W.2d 263, 271 (Iowa 1976), the Court stated:

The equal protection clause proscribes state action which irrationally discriminates among persons. Brightman v. Civil Serv. Com'n. of City of Des Moines, 204 N.W.2d 588, 591 (Iowa 1973). We recognize that it is often necessary for the state to divide persons into classes for legitimate state purposes, but the distinction drawn between classes must not be arbitrary or unreasonable. The classification must be based upon some apparent difference in situation or circumstances of the subjects placed within the one class or the other which establishes the necessity or propriety of discrimination between them. Such discrimination is unreasonable if the classification lacks a rational relationship to a legitimate state purpose. [Emphasis added.]

To same effect: Chicago Title Insurance Co. v. Huff, 256 N.W.2d at 29. It must appear the public interest requires such interposition and that the means are reasonably necessary for accomplishing the purpose and not unduly oppressive to individuals. Id. at 26, 27.

A recent North Carolina Supreme Court case, Hartford Accident & Indemnity Co. v. Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976), involves a situation analogous in certain respects to the present one. There, insurance companies issuing "general liability insurance" (personal injury and property damage) were required to join an insurance exchange, and the statute made it mandatory for each member of the exchange to write

medical malpractice insurance. That statute, however, by its definition of "general liability insurance", excluded automobile liability insurance. Automobile insurers were thus excluded from the statute's requirements. The court found the classification had no reasonable basis and that it violated the state constitution by denying equal protection.

In making this classification between individuals and persons in groups the Act clearly infringes upon the equal protection requirements of the Iowa Constitution, article I, section 6. As has been pointed out, both individual insureds who now have skilled nursing benefits under accident and health policies and potential individual insureds cannot renew those policies⁴ or obtain such insurance coverage with respect to SNFs; however, group insureds or potential group insureds can renew their policies and can obtain such insurance to cover the costs of skilled nursing care in an SNF. If the purpose is to proscribe as an unfair trade practice the selling and renewing of insurance to cover the costs of skilled nursing care, we cannot see how such a purpose is rationally served by this classification which the statute makes. See Redmond v. Carter, 247 N.W.2d at 272. Even given the fact that the insurance business is peculiarly subject to special supervision and control, Chicago Title Insurance Co. v. Huff, 256 N.W.2d at 29, we cannot find any reasonable basis for the classification nor can we see how it is rationally related to protecting the public welfare or serving any legitimate government interest. In short, the classifications which the statute makes are arbitrary and therefore not constitutionally valid.

III. You also ask whether the Act invalidates insurance contracts on which present policies were based prior to the effective date of the Act, July 1, 1978 and if so, whether any of those policies can nevertheless be continued in force. While Section 1 of the Act prohibits selling or renewing individual accident and health insurance policies containing skilled nursing benefits provided by SNFs and ICFs (except, as noted, in certain permitted cases), the Act does allow for such policies to be renewed if the benefit contained in a policy is, by the terms of the policy, "guaranteed by the company to be renewable at the election of the policyholder". Thus, any contracts in force remain in force and are valid until they expire. And when they expire they may not be renewed unless by their terms they give the insured the option of renewing.

IV. Finally, we must also draw your attention to the fact that there is a clear conflict between the title of the Act and the text thereof. The title specifies that an individual has the right to return a policy and obtain a refund within thirty days after its delivery. The text of the Act, however, provides that an individual must do so within ten days after delivery. The Iowa Supreme Court has in the past looked to the title of statutes in deciding their constitutionality. See Keasling v. Thompson, 217 N.W.2d at 689; Lee Enterprises, Inc. v. Iowa Tax Commission, 162 N.W.2d 730 (Iowa 1969). While we doubt this conflict affects the Act's constitutionality, the Iowa Court stated in Lee Enterprises that it is

[o]nly when the act is so indefinite and uncertain that the courts are unable, by accepted rules of construction, to determine with any reasonable degree of certainty what the legislature intended,

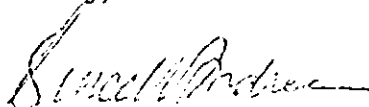
⁴Unless their contracts specifically allow for renewal at the election of the policyholder. See part III., infra.

or when it is so incomplete and inconsistent that it cannot be executed, that the law will be invalidated as indefinite and uncertain.

162 N.W.2d at 739.

The Act is far from being clear and definite.

Sincerely,


BRUCE W. FOUDEE
Assistant Attorney General

BWF/jg

HOUSE FILE 2273

AN ACT

AMENDING THE LAWS APPLICABLE TO ACCIDENT AND HEALTH INSURANCE POLICIES BY RESTRICTING THE SALE OF SKILLED NURSING CARE COVERAGE AND REQUIRING THAT THE INSURED BE GIVEN THIRTY DAYS AFTER DELIVERY OF THE POLICY WITHIN WHICH TO RETURN THE POLICY AND OBTAIN A REFUND OF THE PREMIUM PAID.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section five hundred seven B point four (507B.4), Code 1977, is amended by adding the following new subsections:

NEW SUBSECTION. Selling, offering for sale, delivering or issuing for delivery, or renewing in this state a policy of accident and sickness insurance as defined in section five hundred fourteen A point one (514A.1) of the Code which contains any insurance or indemnity benefit, whether as primary coverage or as supplemental coverage, for loss incurred as a result of expenses for health care provided by a skilled nursing facility as defined in subsection three (3) of section one hundred thirty-five C point one (135C.1) of the Code. Provided, however, that nothing contained in this subsection shall be deemed to prohibit the renewal of any existing insurance or indemnity benefit contained in a policy which was issued for delivery or delivered in this state prior to the effective date of this Act if the benefit, by the terms of the policy, is guaranteed by the company to be renewable at the election of the policyholder.

NEW SUBSECTION. Selling, offering for sale, delivering or issuing for delivery, or renewing in this state a policy of accident and sickness insurance as defined in section five hundred fourteen A point one (514A.1) of the Code which

contains any insurance or indemnity benefit, whether as primary coverage or as supplemental coverage, for loss incurred as a result of expenses for skilled nursing services rendered at an intermediate care facility as defined in subsection two (2) of section one hundred thirty-five C point one (135C.1) of the Code, except when included in a policy which:

a. Provides an insurance or indemnity benefit which is determined by the total amount of the expenses incurred by the insured for care provided at the intermediate care facility; and

b. Provides for payment of the insurance or indemnity benefit irrespective of the nature of the care received and irrespective of the person administering the care. Nothing in this paragraph, however, shall be deemed to prohibit an insurer from excluding from coverage under an intermediate care facility policy any expenses incurred for the delivery of goods or services which are not reasonably necessary in rendering health care at an intermediate care facility, or any portion of expenses for reasonably necessary goods or services which under the particular circumstances is excessive when compared with charges for the same or similar goods or services provided at other intermediate care facilities in this state.

Provided, however, that nothing contained in this subsection shall be deemed to prohibit the renewal of any existing insurance or indemnity benefit contained in a policy which was issued for delivery or delivered in this state prior to the effective date of this Act if the benefit, by the terms of the policy, is guaranteed by the company to be renewable at the election of the policyholder.

Sec. 2. Section five hundred fourteen A point three (514A.3), subsection one (1), Code 1977, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. A provision as follows:

RIGHT TO RETURN POLICY. The insured has the right, within

ten days after receipt of this policy, to return it to the company at its home office or branch office or to the agent through whom it was purchased, and if so returned the premium paid will be refunded and the policy will be void from the beginning and the parties shall be in the same position as if a policy had not been issued.

(In addition to incorporating the foregoing provision into the policy, the insurer shall deliver to the insured at the time of delivery of the policy a duplicate statement of the foregoing provision which shall be contained in conspicuous print on a separate and otherwise blank sheet of paper.)

Sec. 3. The provisions of this Act shall apply to any insurance policy which is delivered or issued for delivery or renewed in this state on or after the effective date of this Act.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2273, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved June 13, 1978

ROBERT D. RAY
Governor