

10 JUL -6 1977

SENATE

S. NO. 219

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Introduced by Senator Antonio "Sonny" F. Trillanes IV

EXPLANATORY NOTE

It is the duty of the State to protect its citizens from falling prey to unscrupulous individuals who deprive them of protections to which they are entitled. However, the current default discretionary provision of insurance policies, and the silence of the government as regards the same prevent the State from affording them of such protection.

Discretionary clauses are contract provisions that grant a commercial insurer, corporation, HMO or administrator the unrestricted authority under an insurance policy, annuity contract or subscriber contract to determine eligibility for benefits and to interpret terms and provisions of the policy, contract or certificate.¹ Although the contract includes the insurer's guarantee to pay remuneration under the agreed upon conditions, the discretionary clause makes those payments subject to the unregulated judgment of the insurer, thereby invalidating the assurance to pay, and rendering the contract potentially deceptive. Because the discretionary clause effectively negates operative terms of the contract, the contract becomes open-ended, incomprehensible, and likely to mislead the insured, in believing that he has full knowledge of what he has committed himself in to.

This bill prohibits insurance carriers from selling, delivering, or issuing a life or health insurance policy or annuity contract that contains a clause that purports to reserve discretion to the carrier to interpret the terms of the policy or contract, or to provide standards of interpretation or review. Under the bill, such "discretionary" clauses are deemed void and unenforceable.

In view of the foregoing, immediate approval of this measure is earnestly sought.

ANTONIO "SONNY" F. TRILLANES IV
Senator

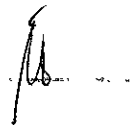
¹ Information retrieved from: http://www.ins.state.ny.us/circltr/2006/cl06_14.htm. Retrieved on 2 March 2009.

10 JUL -6 1907

SENATE

S. NO. 219

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Introduced by Senator Antonio "Sonny" F. Trillanes IV

AN ACT
PROHIBITING INSURANCE CARRIERS FROM SELLING, DELIVERING, OR
ISSUING CONTRACTS THAT CONTAIN DISCRETIONARY CLAUSE, PROVIDING
PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 **SECTION 1. *Short Title.*** – This Act shall be known as the ***“Discretionary Clause***
2 ***Prohibition Act.***”

3
4 **SEC. 2. *Prohibition for Discretionary Clauses.*** – No insurance carrier shall contain a
5 provision purporting to reserve discretion to the carrier to interpret the terms of the contract
6 and/or to provide standards of interpretation of the policy.

7
8 **SEC. 3. *Coverage.*** – This Act shall apply to life, health, annuity, and disability
9 insurance contracts.

10
11 **SEC. 4. *Penal Provision.*** – Notwithstanding any provisions of law, a clause in a policy
12 or certificate of insurance which reserves discretion to the insurance carrier to interpret the terms
13 and/or to provide standards of interpretation of the policy or certificate shall be void and
14 unenforceable.

15

1 **SEC. 4. *Separability Clause.*** – If any provision or part hereof is held invalid or
2 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
3 valid and subsisting.

4
5 **SEC. 5. *Repealing Clause.*** – Any law, presidential decree or issuance, executive order,
6 letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the
7 provisions of this Act, is hereby repealed, modified, or amended accordingly.

8
9 **SEC. 6. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days after its
10 complete publication in the *Official Gazette* or in at least two (2) newspapers of general
11 circulation.

Approved,