

HOUSE BILL No. 1123

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.6-6.

Synopsis: Transfers to caregivers. Provides that a caregiver may not accept or receive one or more gifts from a senior consumer for whom the caregiver has assumed responsibility for all or a part of the care of the senior consumer who needs assistance with activities of daily living if the gift or gifts: (1) have an aggregate fair market value that exceeds \$15,000; or (2) are real estate. Creates an exception for an immediate family member who resides with the senior consumer, if undue influence over the senior consumer is not used. Creates an exception for certain transfer instruments executed before the caregiver became the senior consumer's caregiver. Allows a court action to be brought against the caregiver for a violation. Requires the court to award court costs, reasonable attorney's fees, and other actual expenses of litigation if the senior consumer prevails in a court case. Removes the authority of a court to require to give security upon the filing of the complaint, on the appearance of any defendant, claimant, or other party, or at any later time.

Effective: July 1, 2018.

May

January 4, 2018, read first time and referred to Committee on Judiciary.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1123

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 24-4.6-6-2, AS ADDED BY P.L.250-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 2. (a) This chapter shall be liberally construed and
4 applied to protect senior consumers.

5 (b) The purposes and policies of this chapter are to:
6 (1) simplify, clarify, and modernize the law concerning the
7 ownership, control, and use of property or assets of senior
8 consumers; and
9 (2) protect senior consumers from financial exploitation from
10 persons who, by deception, ~~or~~ intimidation, **or undue influence**,
11 obtain control over the property or assets of a senior consumer.

12 SECTION 2. IC 24-4.6-6-3, AS ADDED BY P.L.250-2013,
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2018]: Sec. 3. The following definitions apply throughout this
15 chapter:

16 (1) **"Caregiver"** means a person who voluntarily, or in
17 exchange for compensation, has assumed responsibility for all



1 or a part of the care of a senior consumer who needs
 2 assistance with activities of daily living. For purposes of
 3 section 7 of this chapter, the term does not include the senior
 4 consumer's spouse.

5 ~~(1)~~ (2) "Deception" means:

6 (A) misrepresentation or omission of any material fact relating
 7 to the terms of a contract or agreement entered into with a
 8 senior consumer or to the existing or pre-existing condition of
 9 any of the property involved in such a contract or agreement;
 10 or

11 (B) the use or employment of any misrepresentation, false
 12 pretense, or false promise in order to induce, encourage, or
 13 solicit a senior consumer to enter into a contract or agreement.

14 **(3) "Immediate family member" means a child, stepchild,
 15 sibling, including a stepsibling or half sibling, grandchild,
 16 aunt, uncle, niece, nephew, daughter-in-law, son-in-law, first
 17 cousin, or parent of the senior consumer.**

18 ~~(2)~~ (4) "Intimidation" means the conduct or communication by a
 19 person directed toward a senior consumer informing or implying
 20 to the senior consumer that the senior consumer will be deprived
 21 of food and nutrition, shelter, prescribed medication, or medical
 22 care and treatment if the senior consumer does not comply with
 23 the person's demands.

24 ~~(3)~~ (5) "Person" means an individual, a corporation, the state of
 25 Indiana or its subdivisions or agencies, a business trust, an estate,
 26 a trust, a partnership, an association, a nonprofit corporation or
 27 organization, a cooperative, or any other legal entity.

28 ~~(4)~~ (6) "Person in a position of trust and confidence" means a
 29 person, in relation to a senior consumer, who:

30 (A) is a parent, spouse, adult child, or other relative by blood
 31 or marriage of the senior consumer;

32 (B) is a joint tenant or tenant in common with the senior
 33 consumer;

34 (C) has a legal or fiduciary relationship with the senior
 35 consumer;

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

37 (E) is a paid or unpaid caregiver for the senior consumer.

38 ~~(5)~~ (7) "Senior consumer" means an individual who is at least
 39 sixty (60) years of age.

40 **(8) "Transfer instrument" means a legal document intended
 41 to transfer money, real property, or personal property after
 42 the senior consumer's death. The term includes a will, trust,**



- 1 **deed, form designated as payable on death, contract, or other**
 2 **beneficiary designation form.**
 3 SECTION 3. IC 24-4.6-6-5, AS ADDED BY P.L.250-2013,
 4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2018]: Sec. 5. (a) A:
 6 (1) senior consumer who is a victim of an act described in section
 7 4(a), ~~or~~ 4(b), **or 7** of this chapter; **or**
 8 **(2) guardian of the senior consumer or the executor or legal**
 9 **representative of the senior consumer's estate who was the**
 10 **victim described in section 7 of this chapter;**
 11 may bring an action against the person who commits the act.
 12 (b) In an action brought against a person under this section, the
 13 court may order the person to:
 14 (1) return property or assets improperly obtained, controlled, or
 15 used; and
 16 (2) reimburse the senior consumer for any damages incurred or
 17 for the value of the property or assets lost as a result of the
 18 violation or violations of this chapter.
 19 (c) In addition to the remedy provided in subsection (b), a court may
 20 order the following:
 21 (1) For knowing violations committed by a person who is not in
 22 a position of trust and confidence:
 23 (A) payment of two (2) times the amount of damages incurred
 24 or value of property or assets lost; and
 25 (B) payment of a civil penalty not exceeding five thousand
 26 dollars (\$5,000).
 27 (2) For knowing violations committed by a person in a position of
 28 trust and confidence:
 29 (A) payment of treble damages; and
 30 (B) payment of a civil penalty not exceeding ten thousand
 31 dollars (\$10,000).
 32 (d) The court ~~may~~ **shall** award:
 33 **(1) court costs;**
 34 **(2) reasonable attorney's fees; and**
 35 **(3) other actual expenses of litigation, including travel**
 36 **expenses;**
 37 to a senior consumer that prevails in an action under this section.
 38 Actual damages awarded to a person under this section have priority
 39 over any civil penalty imposed under this chapter.
 40 (e) The burden of proof in proving that a person committed financial
 41 exploitation of a senior consumer under section 4 of this chapter **or**
 42 **violated section 7 of this chapter** is by a preponderance of the



1 evidence.

2 (f) The attorney general may bring an action to enjoin an alleged
 3 commission of financial exploitation of a senior consumer **or violation**
 4 **of section 7 of this chapter** and may petition the court to freeze the
 5 assets of the person allegedly committing financial exploitation of a
 6 senior consumer **or in violation of section 7 of this chapter** in an
 7 amount equal to but not greater than the alleged value of lost property
 8 or assets for purposes of restoring to the victim the value of the lost
 9 property or assets. The burden of proof required to freeze the assets of
 10 a person allegedly committing financial exploitation of a senior
 11 consumer **or violating section 7 of this chapter** is by a preponderance
 12 of the evidence. In addition, the court may:

13 (1) issue an injunction;

14 (2) order the person to make payment of the money unlawfully
 15 received from the senior consumer or senior consumers, to be
 16 held in escrow for distribution to the aggrieved senior consumer
 17 or senior consumers;

18 (3) for knowing violations, increase the amount of restitution
 19 ordered under subdivision (2) in any amount up to three (3) times
 20 the amount of damages incurred or value of property or assets
 21 lost;

22 (4) order the person to pay to the state the reasonable costs of the
 23 attorney general's investigation and prosecution related to the
 24 action;

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

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

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

32 (g) In an action under subsection (a) or (f), the court may void or
 33 limit the application of contracts or clauses resulting from the financial
 34 exploitation **or violation of section 7 of this chapter**.

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



1 (†) (h) Any person who violates the terms of an injunction issued
 2 under subsection (f) shall forfeit and pay to the state a civil penalty of
 3 not more than fifteen thousand dollars (\$15,000) per violation. For the
 4 purposes of this section, the court issuing the injunction shall retain
 5 jurisdiction, the cause shall be continued, and the attorney general
 6 acting in the name of the state may petition for recovery of civil
 7 penalties. Whenever the court determines that an injunction issued
 8 under subsection (f) has been violated, the court shall award reasonable
 9 costs to the state.

10 SECTION 4. IC 24-4.6-6-7 IS ADDED TO THE INDIANA CODE
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 2018]: **Sec. 7. (a) This section does not apply to:**

- 13 **(1) compensation;**
 14 **(2) reimbursement for expenses; and**
 15 **(3) payment for any legal obligations;**

16 **for a senior consumer's caregiver services.**

17 **(b) Except when an immediate family member who is the senior**
 18 **consumer's caregiver exercises undue influence over the senior**
 19 **consumer to make a gift to the immediate family member, this**
 20 **section does not apply to an immediate family member who resides**
 21 **with the senior consumer.**

22 **(c) A caregiver may not accept or receive one (1) or more of the**
 23 **following gifts from a senior consumer for whom the caregiver has**
 24 **assumed responsibility for all or a portion of the care of the senior**
 25 **consumer who needs assistance with activities of daily living:**

- 26 **(1) Any:**
 27 **(A) money;**
 28 **(B) personal property; or**
 29 **(C) except as provided in subsection (d), transfer**
 30 **instrument;**

31 **that has an aggregate fair market value that exceeds fifteen**
 32 **thousand dollars (\$15,000).**

- 33 **(2) Any real property.**

34 **(d) A transfer instrument by a senior consumer that names the**
 35 **senior consumer's caregiver as a beneficiary is not included in**
 36 **subsection (c) if the caregiver, by a preponderance of the evidence**
 37 **proves that:**

- 38 **(1) the transfer instrument was executed and in effect before**
 39 **the caregiver became the senior consumer's caregiver; or**
 40 **(2) the caregiver's share under the transfer instrument is not**
 41 **greater than the share the caregiver was entitled to under the**
 42 **senior consumer's transfer instrument in effect before**



1 **becoming the senior consumer's caregiver.**

