

HOUSE BILL No. 1504

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-12-16-3; IC 24-5-0.5.

Synopsis: Enforcement of deceptive consumer sales act. Provides that the agency settlement fund administered by the budget agency does not include costs and expenses, including reasonable attorney's fees and expert fees, received by the attorney general in connection with an action brought by the attorney general under the deceptive consumer sales act (act). Amends various provisions of the act to specify that the act applies to unfair, abusive, or deceptive acts, omissions, or practices in connection with a consumer transaction. (The act's terminology currently refers to "deceptive acts".) Amends the definition of "consumer transaction" for purposes of the act to include conduct that arises from, occurs in connection with, or otherwise involves a transaction between commercial entities if the conduct results in harm to consumers. Provides that in an action for an injunction brought by the attorney general under the act, the court may order the supplier to pay the costs and expenses of the action, including reasonable attorney's fees and expert fees. Provides that any award, judgment, or settlement for the costs and expenses of the attorney general's action, including reasonable attorney's fees and expert fees, shall be deposited in the consumer protection judgment fund and used to support the efforts of the division of consumer protection. Provides that an action that arises from, or otherwise involves, a consumer transaction that: (1) involves a transaction between commercial entities; and (2) results in harm to consumers; may only be brought and enforced by the attorney general.

Effective: July 1, 2023.

Speedy

January 17, 2023, read first time and referred to Committee on Judiciary.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1504

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 4-12-16-3, AS AMENDED BY P.L.141-2021,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 3. (a) The fund consists of:
4 (1) except as provided in subsections (b) and (c), all funds
5 received by the state under:
6 (A) multistate and Indiana specific settlements;
7 (B) assurances of voluntary compliance accepted by the
8 attorney general; and
9 (C) any other form of agreement that:
10 (i) is enforceable by a court; and
11 (ii) settles litigation between the state and another party; and
12 (2) all money recovered as court costs or costs related to
13 litigation.
14 (b) Any amount of restitution that is:
15 (1) awarded to an individual or institution under a settlement or
16 assurance of voluntary compliance;
17 (2) unclaimed by an individual or institution;



1 (3) received by a state agency; and
 2 (4) determined to be abandoned property under IC 32-34-1.5;
 3 must be deposited in the abandoned property fund under
 4 IC 32-34-1.5-42.

5 (c) The fund does not include the following:

6 (1) Funds received by the state department of revenue.

7 (2) Funds required to be deposited in the securities division
 8 enforcement account (IC 23-19-6-1).

9 (3) Funds received as the result of a civil forfeiture under
 10 IC 34-24-1.

11 (4) Funds received as a civil penalty or as part of an enforcement
 12 or collection action by an agency authorized to impose a civil
 13 penalty or engage in an enforcement or collection action, if the
 14 funds are required to be deposited in the general fund or another
 15 fund by statute.

16 (5) Funds recovered by the Medicaid fraud control unit in actions
 17 to recover money inappropriately paid out of or obtained from the
 18 state Medicaid program.

19 (6) Amounts required to be paid as consumer restitution or
 20 refunds in settlements specified in this chapter.

21 (7) Amounts received under the Master Settlement Agreement (as
 22 defined in IC 24-3-3-6).

23 **(8) Costs and expenses, including reasonable attorney's fees**
 24 **and expert fees, received by the attorney general in**
 25 **connection with an action brought by the attorney general**
 26 **under IC 24-5-0.5-4(c), as provided for in IC 24-5-0.5-4(c)(7).**

27 SECTION 2. IC 24-5-0.5-1, AS AMENDED BY P.L.1-2006,
 28 SECTION 411, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) This chapter shall be liberally
 30 construed and applied to promote its purposes and policies.

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

32 (1) simplify, clarify, and modernize the law governing:

33 **(A) unfair, abusive, or deceptive acts, omissions, or**
 34 **practices in connection with a consumer transaction;** and
 35 **(B) unconscionable consumer sales practices;**

36 (2) protect consumers from suppliers who commit:

37 **(A) unfair, abusive, or deceptive and acts, omissions, or**
 38 **practices in connection with a consumer transaction; or**
 39 **(B) unconscionable consumer sales acts; practices; and**

40 (3) encourage the development of fair consumer sales practices.

41 SECTION 3. IC 24-5-0.5-2, AS AMENDED BY P.L.280-2019,
 42 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 JULY 1, 2023]: Sec. 2. (a) As used in this chapter:
 2 (1) "Consumer transaction" means a sale, lease, assignment,
 3 award by chance, or other disposition of an item of personal
 4 property, real property, a service, or an intangible, except
 5 securities and policies or contracts of insurance issued by
 6 corporations authorized to transact an insurance business under
 7 the laws of the state of Indiana, with or without an extension of
 8 credit, to a person for purposes that are primarily personal,
 9 familial, charitable, agricultural, or household, or a solicitation to
 10 supply any of these things. However, the term includes the
 11 following:
 12 (A) A transfer of structured settlement payment rights under
 13 IC 34-50-2.
 14 (B) An unsolicited advertisement sent to a person by telephone
 15 facsimile machine offering a sale, lease, assignment, award by
 16 chance, or other disposition of an item of personal property,
 17 real property, a service, or an intangible.
 18 (C) The collection of or attempt to collect a debt by a debt
 19 collector.
 20 **(D) Conduct that is described in section 3(a) of this chapter**
 21 **and that arises from, occurs in connection with, or**
 22 **otherwise involves a transaction between commercial**
 23 **entities if the conduct results in harm to consumers.**
 24 (2) "Person" means an individual, corporation, the state of Indiana
 25 or its subdivisions or agencies, business trust, estate, trust,
 26 partnership, association, nonprofit corporation or organization, or
 27 cooperative or any other legal entity.
 28 (3) "Supplier" means the following:
 29 (A) A seller, lessor, assignor, or other person who regularly
 30 engages in or solicits consumer transactions, including
 31 soliciting a consumer transaction by using a telephone
 32 facsimile machine to transmit an unsolicited advertisement.
 33 The term includes a manufacturer, wholesaler, ~~or~~ retailer, **or,**
 34 **in a consumer transaction described in subdivision (1)(D),**
 35 **a commercial entity, regardless of whether ~~or not~~ the person**
 36 **deals directly with the consumer.**
 37 (B) A debt collector.
 38 (4) "Subject of a consumer transaction" means the personal
 39 property, real property, services, or intangibles offered or
 40 furnished in a consumer transaction.
 41 (5) "Cure" as applied to a deceptive act, means either:
 42 (A) to offer in writing to adjust or modify the consumer



- 1 transaction to which the act relates to conform to the
 2 reasonable expectations of the consumer generated by such
 3 deceptive act and to perform such offer if accepted by the
 4 consumer; or
 5 (B) to offer in writing to rescind such consumer transaction
 6 and to perform such offer if accepted by the consumer.
 7 The term includes an offer in writing of one (1) or more items of
 8 value, including monetary compensation, that the supplier
 9 delivers to a consumer or a representative of the consumer if
 10 accepted by the consumer.
- 11 (6) "Offer to cure" as applied to a deceptive act is a cure that:
 12 (A) is reasonably calculated to remedy a loss claimed by the
 13 consumer; and
 14 (B) includes a minimum additional amount that is the greater
 15 of:
 16 (i) ten percent (10%) of the value of the remedy under
 17 clause (A), but not more than four thousand dollars
 18 (\$4,000); or
 19 (ii) five hundred dollars (\$500);
 20 as compensation for attorney's fees, expenses, and other costs
 21 that a consumer may incur in relation to the deceptive act.
- 22 (7) "Uncured deceptive act" means a deceptive act:
 23 (A) with respect to which a consumer who has been damaged
 24 by such act has given notice to the supplier under section 5(a)
 25 of this chapter; and
 26 (B) either:
 27 (i) no offer to cure has been made to such consumer within
 28 thirty (30) days after such notice; or
 29 (ii) the act has not been cured as to such consumer within a
 30 reasonable time after the consumer's acceptance of the offer
 31 to cure.
- 32 (8) "Incurable deceptive act" means a deceptive act done by a
 33 supplier as part of a scheme, artifice, or device with intent to
 34 defraud or mislead. The term includes a failure of a transferee of
 35 structured settlement payment rights to timely provide a true and
 36 complete disclosure statement to a payee as provided under
 37 IC 34-50-2 in connection with a direct or indirect transfer of
 38 structured settlement payment rights.
- 39 (9) "Senior consumer" means an individual who is at least sixty
 40 (60) years of age.
- 41 (10) "Telephone facsimile machine" means equipment that has
 42 the capacity to transcribe text or images, or both, from:



- 1 (A) paper into an electronic signal and to transmit that signal
 2 over a regular telephone line; or
 3 (B) an electronic signal received over a regular telephone line
 4 onto paper.
- 5 (11) "Unsolicited advertisement" means material advertising the
 6 commercial availability or quality of:
 7 (A) property;
 8 (B) goods; or
 9 (C) services;
- 10 that is transmitted to a person without the person's prior express
 11 invitation or permission, in writing or otherwise.
- 12 (12) "Debt" has the meaning set forth in 15 U.S.C. 1692(a)(5).
- 13 (13) "Debt collector" has the meaning set forth in 15 U.S.C.
 14 1692(a)(6). The term does not include a person admitted to the
 15 practice of law in Indiana if the person is acting within the course
 16 and scope of the person's practice as an attorney. The term
 17 includes a debt buyer (as defined in IC 24-5-15.5).
- 18 (b) As used in section 3(b)(15) and 3(b)(16) of this chapter:
- 19 (1) "Directory assistance" means the disclosure of telephone
 20 number information in connection with an identified telephone
 21 service subscriber by means of a live operator or automated
 22 service.
- 23 (2) "Local telephone directory" refers to a telephone classified
 24 advertising directory or the business section of a telephone
 25 directory that is distributed by a telephone company or directory
 26 publisher to subscribers located in the local exchanges contained
 27 in the directory. The term includes a directory that includes
 28 listings of more than one (1) telephone company.
- 29 (3) "Local telephone number" refers to a telephone number that
 30 has the three (3) number prefix used by the provider of telephone
 31 service for telephones physically located within the area covered
 32 by the local telephone directory in which the number is listed. The
 33 term does not include long distance numbers or 800-, 888-, or
 34 900- exchange numbers listed in a local telephone directory.
- 35 SECTION 4. IC 24-5-0.5-3, AS AMENDED BY P.L.34-2022,
 36 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2023]: Sec. 3. (a) A supplier may not commit an unfair,
 38 abusive, or deceptive act, omission, or practice in connection with a
 39 consumer transaction. Such an act, omission, or practice by a supplier
 40 is a violation of this chapter whether it occurs before, during, or after
 41 the transaction. An act, omission, or practice prohibited by this section
 42 includes both implicit and explicit misrepresentations.



1 (b) Without limiting the scope of subsection (a), the following acts,
2 and the following representations as to the subject matter of a
3 consumer transaction, made orally, in writing, or by electronic
4 communication, by a supplier, are **unfair, abusive, or** deceptive acts,
5 **omissions, or practices in connection with a consumer transaction:**

6 (1) That such subject of a consumer transaction has sponsorship,
7 approval, performance, characteristics, accessories, uses, or
8 benefits it does not have which the supplier knows or should
9 reasonably know it does not have.

10 (2) That such subject of a consumer transaction is of a particular
11 standard, quality, grade, style, or model, if it is not and if the
12 supplier knows or should reasonably know that it is not.

13 (3) That such subject of a consumer transaction is new or unused,
14 if it is not and if the supplier knows or should reasonably know
15 that it is not.

16 (4) That such subject of a consumer transaction will be supplied
17 to the public in greater quantity than the supplier intends or
18 reasonably expects.

19 (5) That replacement or repair constituting the subject of a
20 consumer transaction is needed, if it is not and if the supplier
21 knows or should reasonably know that it is not.

22 (6) That a specific price advantage exists as to such subject of a
23 consumer transaction, if it does not and if the supplier knows or
24 should reasonably know that it does not.

25 (7) That the supplier has a sponsorship, approval, or affiliation in
26 such consumer transaction the supplier does not have, and which
27 the supplier knows or should reasonably know that the supplier
28 does not have.

29 (8) That such consumer transaction involves or does not involve
30 a warranty, a disclaimer of warranties, or other rights, remedies,
31 or obligations, if the representation is false and if the supplier
32 knows or should reasonably know that the representation is false.

33 (9) That the consumer will receive a rebate, discount, or other
34 benefit as an inducement for entering into a sale or lease in return
35 for giving the supplier the names of prospective consumers or
36 otherwise helping the supplier to enter into other consumer
37 transactions, if earning the benefit, rebate, or discount is
38 contingent upon the occurrence of an event subsequent to the time
39 the consumer agrees to the purchase or lease.

40 (10) That the supplier is able to deliver or complete the subject of
41 the consumer transaction within a stated period of time, when the
42 supplier knows or should reasonably know the supplier could not.



- 1 If no time period has been stated by the supplier, there is a
 2 presumption that the supplier has represented that the supplier
 3 will deliver or complete the subject of the consumer transaction
 4 within a reasonable time, according to the course of dealing or the
 5 usage of the trade.
- 6 (11) That the consumer will be able to purchase the subject of the
 7 consumer transaction as advertised by the supplier, if the supplier
 8 does not intend to sell it.
- 9 (12) That the replacement or repair constituting the subject of a
 10 consumer transaction can be made by the supplier for the estimate
 11 the supplier gives a customer for the replacement or repair, if the
 12 specified work is completed and:
- 13 (A) the cost exceeds the estimate by an amount equal to or
 14 greater than ten percent (10%) of the estimate;
- 15 (B) the supplier did not obtain written permission from the
 16 customer to authorize the supplier to complete the work even
 17 if the cost would exceed the amounts specified in clause (A);
- 18 (C) the total cost for services and parts for a single transaction
 19 is more than seven hundred fifty dollars (\$750); and
- 20 (D) the supplier knew or reasonably should have known that
 21 the cost would exceed the estimate in the amounts specified in
 22 clause (A).
- 23 (13) That the replacement or repair constituting the subject of a
 24 consumer transaction is needed, and that the supplier disposes of
 25 the part repaired or replaced earlier than seventy-two (72) hours
 26 after both:
- 27 (A) the customer has been notified that the work has been
 28 completed; and
- 29 (B) the part repaired or replaced has been made available for
 30 examination upon the request of the customer.
- 31 (14) Engaging in the replacement or repair of the subject of a
 32 consumer transaction if the consumer has not authorized the
 33 replacement or repair, and if the supplier knows or should
 34 reasonably know that it is not authorized.
- 35 (15) The act of misrepresenting the geographic location of the
 36 supplier by listing an alternate business name or an assumed
 37 business name (as described in IC 23-0.5-3-4) in a local telephone
 38 directory if:
- 39 (A) the name misrepresents the supplier's geographic location;
- 40 (B) the listing fails to identify the locality and state of the
 41 supplier's business;
- 42 (C) calls to the local telephone number are routinely forwarded



- 1 or otherwise transferred to a supplier's business location that
 2 is outside the calling area covered by the local telephone
 3 directory; and
 4 (D) the supplier's business location is located in a county that
 5 is not contiguous to a county in the calling area covered by the
 6 local telephone directory.
- 7 (16) The act of listing an alternate business name or assumed
 8 business name (as described in IC 23-0.5-3-4) in a directory
 9 assistance data base if:
 10 (A) the name misrepresents the supplier's geographic location;
 11 (B) calls to the local telephone number are routinely forwarded
 12 or otherwise transferred to a supplier's business location that
 13 is outside the local calling area; and
 14 (C) the supplier's business location is located in a county that
 15 is not contiguous to a county in the local calling area.
- 16 (17) The violation by a supplier of IC 24-3-4 concerning
 17 cigarettes for import or export.
- 18 (18) The act of a supplier in knowingly selling or reselling a
 19 product to a consumer if the product has been recalled, whether
 20 by the order of a court or a regulatory body, or voluntarily by the
 21 manufacturer, distributor, or retailer, unless the product has been
 22 repaired or modified to correct the defect that was the subject of
 23 the recall.
- 24 (19) The violation by a supplier of 47 U.S.C. 227, including any
 25 rules or regulations issued under 47 U.S.C. 227.
- 26 (20) The violation by a supplier of the federal Fair Debt
 27 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
 28 rules or regulations issued under the federal Fair Debt Collection
 29 Practices Act (15 U.S.C. 1692 et seq.).
- 30 (21) A violation of IC 24-5-7 (concerning health spa services), as
 31 set forth in IC 24-5-7-17.
- 32 (22) A violation of IC 24-5-8 (concerning business opportunity
 33 transactions), as set forth in IC 24-5-8-20.
- 34 (23) A violation of IC 24-5-10 (concerning home consumer
 35 transactions), as set forth in IC 24-5-10-18.
- 36 (24) A violation of IC 24-5-11 (concerning real property
 37 improvement contracts), as set forth in IC 24-5-11-14.
- 38 (25) A violation of IC 24-5-12 (concerning telephone
 39 solicitations), as set forth in IC 24-5-12-23.
- 40 (26) A violation of IC 24-5-13.5 (concerning buyback motor
 41 vehicles), as set forth in IC 24-5-13.5-14.
- 42 (27) A violation of IC 24-5-14 (concerning automatic



- 1 dialing-announcing devices), as set forth in IC 24-5-14-13.
 2 (28) A violation of IC 24-5-15 (concerning credit services
 3 organizations), as set forth in IC 24-5-15-11.
 4 (29) A violation of IC 24-5-16 (concerning unlawful motor
 5 vehicle subleasing), as set forth in IC 24-5-16-18.
 6 (30) A violation of IC 24-5-17 (concerning environmental
 7 marketing claims), as set forth in IC 24-5-17-14.
 8 (31) A violation of IC 24-5-19 (concerning deceptive commercial
 9 solicitation), as set forth in IC 24-5-19-11.
 10 (32) A violation of IC 24-5-21 (concerning prescription drug
 11 discount cards), as set forth in IC 24-5-21-7.
 12 (33) A violation of IC 24-5-23.5-7 (concerning real estate
 13 appraisals), as set forth in IC 24-5-23.5-9.
 14 (34) A violation of IC 24-5-26 (concerning identity theft), as set
 15 forth in IC 24-5-26-3.
 16 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
 17 as set forth in IC 24-5.5-6-1.
 18 (36) A violation of IC 24-8 (concerning promotional gifts and
 19 contests), as set forth in IC 24-8-6-3.
 20 (37) A violation of IC 21-18.5-6 (concerning representations
 21 made by a postsecondary credit bearing proprietary educational
 22 institution), as set forth in IC 21-18.5-6-22.5.
 23 (38) A violation of IC 24-5-15.5 (concerning collection actions of
 24 a plaintiff debt buyer), as set forth in IC 24-5-15.5-6.
 25 (39) A violation of IC 24-14 (concerning towing services), as set
 26 forth in IC 24-14-10-1.
 27 (40) A violation of IC 24-5-14.5 (concerning misleading or
 28 inaccurate caller identification information), as set forth in
 29 IC 24-5-14.5-12.
 30 (41) A violation of IC 24-5-27 (concerning intrastate inmate
 31 calling services), as set forth in IC 24-5-27-27.
 32 (c) Any representations on or within a product or its packaging or
 33 in advertising or promotional materials which would constitute **an**
 34 **unfair, abusive, or** deceptive act, ~~shall be omission, or practice is the~~
 35 **unfair, abusive, or** deceptive act, **omission, or practice** both of the
 36 supplier who places such representation thereon or therein, or who
 37 authored such materials, and ~~such of~~ other suppliers who ~~shall~~ state
 38 orally or in writing that ~~such the~~ representation is true if ~~such the~~ other
 39 ~~supplier shall~~ **suppliers** know or have reason to know that ~~such the~~
 40 representation was false.
 41 (d) If a supplier shows by a preponderance of the evidence that an
 42 act resulted from a bona fide error notwithstanding the maintenance of



1 procedures reasonably adopted to avoid the error, ~~such the act shall is~~
2 not be an **unfair, abusive, or deceptive act, omission, or practice**
3 within the meaning of this chapter.

4 (e) It ~~shall be is~~ a defense to any action brought under this chapter
5 that the representation constituting an alleged **unfair, abusive, or**
6 **deceptive act, omission, or practice** was one made in good faith by the
7 supplier without knowledge of its falsity and in reliance upon the oral
8 or written representations of:

- 9 (1) the manufacturer;
 - 10 (2) the person from whom the supplier acquired the product;
 - 11 (3) any testing organization; or
 - 12 (4) any other person; ~~provided that~~
- 13 **if the source thereof of the representation** is disclosed to the
14 consumer.

15 (f) For purposes of subsection (b)(12), a supplier that provides
16 estimates before performing repair or replacement work for a customer
17 shall give the customer a written estimate itemizing as closely as
18 possible the price for labor and parts necessary for the specific job
19 before commencing the work.

20 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
21 company or other provider of a telephone directory or directory
22 assistance service or its officer or agent is immune from liability for
23 publishing the listing of an alternate business name or assumed
24 business name of a supplier in its directory or directory assistance data
25 base unless the telephone company or other provider of a telephone
26 directory or directory assistance service is the same person as the
27 supplier who has committed the **unfair, abusive, or deceptive act,**
28 **omission, or practice.**

29 (h) For purposes of subsection (b)(18), it is an affirmative defense
30 to any action brought under this chapter that the product has been
31 altered by a person other than the defendant to render the product
32 completely incapable of serving its original purpose.

33 SECTION 5. IC 24-5-0.5-4, AS AMENDED BY THE TECHNICAL
34 CORRECTIONS BILL OF THE 2023 GENERAL ASSEMBLY, IS
35 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:
36 Sec. 4. (a) A person relying upon an **unfair, abusive, or deceptive act,**
37 **omission, or practice, including an** uncured or incurable deceptive
38 act, may bring an action for the damages actually suffered as a
39 consumer as a result of the **unfair, abusive, or deceptive act,**
40 **omission, or practice** or five hundred dollars (\$500), whichever is
41 greater. The court may increase damages for a willful **unfair, abusive,**
42 **or deceptive act, omission, or practice** in an amount that does not



1 exceed the greater of:

2 (1) three (3) times the actual damages of the consumer suffering
3 the loss; or

4 (2) one thousand dollars (\$1,000).

5 Except as provided in subsection ~~(j)~~; **(k)**, the court may award
6 reasonable ~~attorney~~ **attorney's** fees to the party that prevails in an
7 action under this subsection. This subsection does not apply to a
8 consumer transaction in real property, including a claim or action
9 involving a construction defect (as defined in IC 32-27-3-1(5)) brought
10 against a construction professional (as defined in IC 32-27-3-1(4)),
11 except for purchases of time shares and camping club memberships.
12 This subsection does not apply with respect to a deceptive act
13 described in section 3(b)(20) of this chapter. This subsection also does
14 not apply to a violation of IC 24-4.7, IC 24-5-12, IC 24-5-14, or
15 IC 24-5-14.5. Actual damages awarded to a person under this section
16 have priority over any civil penalty imposed under this chapter.

17 (b) Any person who is entitled to bring an action under subsection
18 (a) on the person's own behalf against a supplier for damages for ~~a~~ **an**
19 **unfair, abusive, or** deceptive act, **omission, or practice** may bring a
20 class action against such supplier on behalf of any class of persons of
21 which that person is a member and which has been damaged by such
22 **unfair, abusive, or** deceptive act, **omission, or practice**, subject to
23 and under the Indiana Rules of Trial Procedure governing class actions,
24 except as herein expressly provided. Except as provided in subsection
25 ~~(j)~~; **(k)**, the court may award reasonable ~~attorney~~ **attorney's** fees to the
26 party that prevails in a class action under this subsection, provided that
27 such fee shall be determined by the amount of time reasonably
28 expended by the attorney and not by the amount of the judgment,
29 although the contingency of the fee may be considered. Except in the
30 case of an extension of time granted by the attorney general under
31 IC 24-10-2-2(b) in an action subject to IC 24-10, any money or other
32 property recovered in a class action under this subsection which
33 cannot, with due diligence, be restored to consumers within one (1)
34 year after the judgment becomes final shall be returned to the party
35 depositing the same. This subsection does not apply to a consumer
36 transaction in real property, except for purchases of time shares and
37 camping club memberships. This subsection does not apply with
38 respect to ~~a~~ **an unfair, abusive, or** deceptive act, **omission, or**
39 **practice** described in section 3(b)(20) of this chapter. Actual damages
40 awarded to a class have priority over any civil penalty imposed under
41 this chapter.

42 (c) The attorney general may bring an action to enjoin ~~a~~ **an unfair,**



1 **abusive, or deceptive act, omission, or practice**, including a **an**
 2 **unfair, abusive, or deceptive act, omission, or practice** described in
 3 section 3(b)(20) of this chapter, notwithstanding subsections (a) and
 4 (b). ~~However,~~ The attorney general may seek to enjoin patterns of
 5 **unfair, abusive, or deceptive acts, omissions, or practices, including**
 6 incurable deceptive acts, with respect to consumer transactions in real
 7 property. In addition, the court may:

8 (1) issue an injunction;

9 (2) order the supplier to make payment of the money unlawfully
 10 received from the aggrieved consumers to be held in escrow for
 11 distribution to aggrieved consumers;

12 (3) for a knowing violation against a senior consumer, increase
 13 the amount of restitution ordered under subdivision (2) in any
 14 amount up to three (3) times the amount of damages incurred or
 15 value of property or assets lost;

16 (4) order the supplier to pay to the state the reasonable costs of
 17 the attorney general's investigation and prosecution related to the
 18 action;

19 (5) provide for the appointment of a receiver; ~~and~~

20 (6) order the department of state revenue to suspend the supplier's
 21 registered retail merchant certificate, subject to the requirements
 22 and prohibitions contained in IC 6-2.5-8-7(i), if the court finds
 23 that a violation of this chapter involved the sale or solicited sale
 24 of a synthetic drug (as defined in IC 35-31.5-2-321), a synthetic
 25 drug lookalike substance (as defined in IC 35-31.5-2-321.5
 26 (repealed)) (before July 1, 2019), a controlled substance analog
 27 (as defined in IC 35-48-1-9.3), or a substance represented to be a
 28 controlled substance (as described in IC 35-48-4-4.6); **and**

29 **(7) order the supplier to pay the costs and expenses of the**
 30 **action, including reasonable attorney's fees and expert fees.**
 31 **Any award, judgment, or settlement for the costs and**
 32 **expenses of the action, including reasonable attorney's fees**
 33 **and expert fees, made or reached under this subdivision shall**
 34 **be deposited in the consumer protection judgment fund and**
 35 **used to support the efforts of the division of consumer**
 36 **protection created by IC 4-6-9-1.**

37 **An action that arises from, or otherwise involves, a consumer**
 38 **transaction described in section 2(a)(1)(D) of this chapter may only**
 39 **be brought and enforced by the attorney general under this**
 40 **subsection.**

41 (d) In an action under subsection (a), (b), or (c), the court may void
 42 or limit the application of contracts or clauses resulting from **unfair,**



1 **abusive, or** deceptive acts, **omissions, or practices** and order
2 restitution to be paid to aggrieved consumers.

3 (e) In any action under subsection (a) or (b), upon the filing of the
4 complaint or on the appearance of any defendant, claimant, or any
5 other party, or at any later time, the trial court, the supreme court, or the
6 court of appeals may require the plaintiff, defendant, claimant, or any
7 other party or parties to give security, or additional security, in such
8 sum as the court shall direct to pay all costs, expenses, and
9 disbursements that shall be awarded against that party or which that
10 party may be directed to pay by any interlocutory order by the final
11 judgment or on appeal.

12 (f) Any person who violates the terms of an injunction issued under
13 subsection (c) shall forfeit and pay to the state a civil penalty of not
14 more than fifteen thousand dollars (\$15,000) per violation. For the
15 purposes of this section, the court issuing an injunction shall retain
16 jurisdiction, the cause shall be continued, and the attorney general
17 acting in the name of the state may petition for recovery of civil
18 penalties. Whenever the court determines that an injunction issued
19 under subsection (c) has been violated, the court shall award
20 reasonable costs to the state.

21 (g) If a court finds any person has knowingly violated section 3 or
22 10 of this chapter, other than section 3(b)(19), 3(b)(20), or 3(b)(40) of
23 this chapter, the attorney general, in an action pursuant to subsection
24 (c), may recover from the person on behalf of the state a civil penalty
25 of a fine not exceeding five thousand dollars (\$5,000) per violation.

26 (h) If a court finds that a person has violated section 3(b)(19) of this
27 chapter, the attorney general, in an action under subsection (c), may
28 recover from the person on behalf of the state a civil penalty as follows:

29 (1) For a knowing or intentional violation, one thousand five
30 hundred dollars (\$1,500).

31 (2) For a violation other than a knowing or intentional violation,
32 five hundred dollars (\$500).

33 A civil penalty recovered under this subsection shall be deposited in
34 the consumer protection division telephone solicitation fund
35 established by IC 24-4.7-3-6 to be used for the administration and
36 enforcement of section 3(b)(19) of this chapter.

37 (i) A senior consumer relying upon **an unfair, abusive, or**
38 **deceptive act, omission, or practice, including:**

39 (1) an uncured or incurable deceptive act; ~~including or~~

40 (2) an act related to hypnotism;

41 may bring an action to recover treble damages, if appropriate.

42 (j) An offer to cure is:



- 1 (1) not admissible as evidence in a proceeding initiated under this
2 section unless the offer to cure is delivered by a supplier to the
3 consumer or a representative of the consumer before the supplier
4 files the supplier's initial response to a complaint; and
5 (2) only admissible as evidence in a proceeding initiated under
6 this section to prove that a supplier is not liable for attorney's fees
7 under subsection (k).

8 If the offer to cure is timely delivered by the supplier, the supplier may
9 submit the offer to cure as evidence to prove in the proceeding in
10 accordance with the Indiana Rules of Trial Procedure that the supplier
11 made an offer to cure.

12 (k) A supplier may not be held liable for the attorney's fees and
13 court costs of the consumer that are incurred following the timely
14 delivery of an offer to cure as described in subsection (j) unless the
15 actual damages awarded, not including attorney's fees and costs, exceed
16 the value of the offer to cure.

17 (l) If a court finds that a person has knowingly violated section
18 3(b)(20) of this chapter, the attorney general, in an action under
19 subsection (c), may recover from the person on behalf of the state a
20 civil penalty not exceeding one thousand dollars (\$1,000) per
21 consumer. In determining the amount of the civil penalty in any action
22 by the attorney general under this subsection, the court shall consider,
23 among other relevant factors, the frequency and persistence of
24 noncompliance by the debt collector, the nature of the noncompliance,
25 and the extent to which the noncompliance was intentional. A person
26 may not be held liable in any action by the attorney general for a
27 violation of section 3(b)(20) of this chapter if the person shows by a
28 preponderance of evidence that the violation was not intentional and
29 resulted from a bona fide error, notwithstanding the maintenance of
30 procedures reasonably adapted to avoid the error. A person may not be
31 held liable in any action for a violation of this chapter for contacting a
32 person other than the debtor, if the contact is made in compliance with
33 the Fair Debt Collection Practices Act.

34 (m) If a court finds that a person has knowingly or intentionally
35 violated section 3(b)(40) of this chapter, the attorney general, in an
36 action under subsection (c), may recover from the person on behalf of
37 the state a civil penalty in accordance with IC 24-5-14.5-12(b). As
38 specified in IC 24-5-14.5-12(b), a civil penalty recovered under
39 IC 24-5-14.5-12(b) shall be deposited in the consumer protection
40 division telephone solicitation fund established by IC 24-4.7-3-6 to be
41 used for the administration and enforcement of IC 24-5-14.5. In
42 addition to the recovery of a civil penalty in accordance with



1 IC 24-5-14.5-12(b), the attorney general may also recover reasonable
 2 ~~attorney attorney's~~ fees and court costs from the person on behalf of
 3 the state. Those funds shall also be deposited in the consumer
 4 protection division telephone solicitation fund established by
 5 IC 24-4.7-3-6.

6 SECTION 6. IC 24-5-0.5-5 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) ~~No~~ An action
 8 may **not** be brought under this chapter, except under section 4(c) of this
 9 chapter, unless **either of the following applies:**

10 (1) The ~~deceptive act is~~ **action arises from, or otherwise**
 11 **involves, an incurable deceptive act.** ~~or~~

12 (2) **Unless the unfair, abusive, or deceptive act, omission, or**
 13 **practice has become an uncured deceptive act,** the consumer
 14 bringing the action ~~shall have given~~ **gives** notice in writing to the
 15 supplier ~~within the sooner of (i)~~ **not later than the earliest of:**

16 (A) six (6) months after the initial discovery of the **unfair,**
 17 **abusive, or deceptive act, (ii) omission, or practice;**

18 (B) one (1) year following ~~such~~ **the** consumer transaction; or
 19 (iii)

20 (C) **the final date within** any time limitation, **that is** not less
 21 than thirty (30) days, of any period of warranty applicable to
 22 the transaction.

23 ~~which A notice shall under this subdivision must~~ state fully the
 24 nature of the alleged **unfair, abusive, or deceptive act, omission,**
 25 **or practice,** and the actual damage suffered therefrom. ~~and unless~~
 26 ~~such deceptive act shall have become an uncured deceptive act.~~

27 (b) No action may be brought under this chapter except as expressly
 28 authorized in section 4(a), 4(b), or 4(c) of this chapter. Any action
 29 brought under this chapter may not be brought more than two (2) years
 30 after the occurrence of the **unfair, abusive, or deceptive act, omission,**
 31 **or practice.**

32 SECTION 7. IC 24-5-0.5-7 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. (a) In the
 34 administration of this chapter, the attorney general may accept an
 35 assurance of voluntary compliance with respect to any **unfair, abusive,**
 36 **or deceptive act, omission, or practice** from any person who has
 37 engaged in, is engaging in, or is about to engage in such **unfair,**
 38 **abusive, or deceptive act, omission, or practice.** The assurance of
 39 voluntary compliance may include a stipulation for the voluntary
 40 payment by the person of the costs of investigation or payment of an
 41 amount to be held in escrow pending the outcome of an action or as
 42 restitution to aggrieved consumers, or both. The assurance of voluntary



1 compliance ~~shall~~ **must** be in writing and shall be filed with and subject
2 to the approval of the court having jurisdiction.

3 (b) The assurance of voluntary compliance shall not be considered
4 an admission of ~~a~~ **an unfair, abusive, or** deceptive act, **omission, or**
5 **practice** for any purpose; however, any violation of the terms of the
6 assurance constitutes prima facie evidence of ~~a~~ **an unfair, abusive, or**
7 deceptive act, **omission, or practice**. Matters ~~thus~~ closed **as a result**
8 **of an assurance of voluntary compliance** may at any time be
9 reopened by the attorney general for further proceedings in the public
10 interest.

