

SENATE BILL No. 247

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-0.5.

Synopsis: Deceptive consumer sales act. Makes the following changes to the deceptive consumer sales act (act): (1) With respect to an action brought by an individual consumer under the act, increases: (A) the amount of statutory damages for an uncured or incurable deceptive act from \$500 to \$2,000; and (B) the amount of statutory damages for a willful deceptive act from \$1,000 to \$6,000. (2) In an individual action or a class action under the act, requires the court to award reasonable attorney fees to a prevailing consumer (versus allowing the court to award reasonable attorney fees to the prevailing party in the action, under current law). (3) Provides that an individual action or a class action may be brought under the act with respect to transactions involving the lease of real estate, notwithstanding the act's exemption from such suits for consumer transactions in real property. (4) Removes the act's exemption from individual actions or class actions under the act for violations of the federal Fair Debt Collection Practices Act. (5) Amends the provision concerning prerequisites to bringing an individual action or a class action under the act to provide that a consumer's written notice of a deceptive act to the supplier in the consumer transaction: (A) must be given within the earliest of: (i) one year (versus six months under current law) after the initial discovery of the deceptive act; (ii) one year following the transaction; or (iii) any time limit of at least 30 days under any warranty applicable to the transaction; and (B) is sufficient under the act if the written notice is reasonably calculated to provide notice of the general nature of the deceptive act and the resulting damages. (6) Amends the provision concerning the statute of limitations for actions brought under the act
(Continued next page)

Effective: July 1, 2021.

Alting

January 11, 2021, read first time and referred to Committee on Judiciary.



Digest Continued

to provide that such actions may not be brought more than six years (versus two years under current law) after the occurrence of the deceptive act.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 247



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 24-5-0.5-4, AS AMENDED BY P.L.156-2020,
2 SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 4. (a) A person ~~relying upon~~ **bringing an action**
4 **based on** an uncured or incurable deceptive act may bring an action for
5 the **actual** damages ~~actually suffered~~ as a consumer as a result of the
6 deceptive act, or ~~five hundred for two thousand~~ **dollars (\$500);**
7 **(\$2,000)**, whichever is greater. The court may increase damages for a
8 willful deceptive act in an amount that does not exceed the greater of:
9 (1) three (3) times the actual damages; ~~of the consumer suffering~~
10 ~~the loss~~; or
11 (2) ~~one six thousand dollars (\$1,000);~~ **(\$6,000).**
12 Except as provided in subsection (j), the court ~~may~~ **shall** award
13 reasonable attorney fees to ~~the party that prevails a prevailing~~
14 **consumer** in an action under this subsection. This subsection does not
15 apply to a consumer transaction in real property, including a claim or



1 action involving a construction defect (as defined in IC 32-27-3-1(5))
 2 brought against a construction professional (as defined in
 3 IC 32-27-3-1(4)), except for **transactions involving the lease of real**
 4 **estate, or transactions involving** purchases of time shares ~~and or~~
 5 camping club memberships. ~~This subsection does not apply with~~
 6 ~~respect to a deceptive act described in section 3(b)(20) of this chapter.~~
 7 This subsection also does not apply to a violation of IC 24-4.7,
 8 IC 24-5-12, IC 24-5-14, or IC 24-5-14.5. Actual damages awarded to
 9 a person under this section have priority over any civil penalty imposed
 10 under this chapter.

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

35 (c) The attorney general may bring an action to enjoin a deceptive
 36 act, including a deceptive act described in section 3(b)(20) of this
 37 chapter. ~~notwithstanding subsections (a) and (b).~~ However, the attorney
 38 general may seek to enjoin patterns of incurable deceptive acts with
 39 respect to consumer transactions in real property. In addition, the court
 40 may:

- 41 (1) issue an injunction;
 42 (2) order the supplier to make payment of the money unlawfully



1 received from the aggrieved consumers to be held in escrow for
2 distribution to aggrieved consumers;

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

7 (4) order the supplier to pay to the state the reasonable costs of
8 the attorney general's investigation and prosecution related to the
9 action;

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

11 (6) order the department of state revenue to suspend the supplier's
12 registered retail merchant certificate, subject to the requirements
13 and prohibitions contained in IC 6-2.5-8-7(i), if the court finds
14 that a violation of this chapter involved the sale or solicited sale
15 of a synthetic drug (as defined in IC 35-31.5-2-321), a synthetic
16 drug lookalike substance (as defined in IC 35-31.5-2-321.5
17 (repealed)) (before July 1, 2019), a controlled substance analog
18 (as defined in IC 35-48-1-9.3), or a substance represented to be a
19 controlled substance (as described in IC 35-48-4-4.6).

20 (d) In an action under subsection (a), (b), or (c), the court may void
21 or limit the application of contracts or clauses resulting from deceptive
22 acts and order restitution to be paid to aggrieved consumers.

23 (e) In any action under subsection (a) or (b), upon the filing of the
24 complaint or on the appearance of any defendant, claimant, or any
25 other party, or at any later time, the trial court, the supreme court, or the
26 court of appeals may require the plaintiff, defendant, claimant, or any
27 other party or parties to give security, or additional security, in such
28 sum as the court shall direct to pay all costs, expenses, and
29 disbursements that shall be awarded against that party or which that
30 party may be directed to pay by any interlocutory order by the final
31 judgment or on appeal.

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

41 (g) If a court finds any person has knowingly violated section 3 or
42 10 of this chapter, other than section 3(b)(19), 3(b)(20), or 3(b)(40) of



1 this chapter, the attorney general, in an action pursuant to subsection
 2 (c), may recover from the person on behalf of the state a civil penalty
 3 of a fine not exceeding five thousand dollars (\$5,000) per violation.

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

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

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

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

15 (i) A senior consumer relying upon an uncured or incurable
 16 deceptive act, including an act related to hypnotism, may bring an
 17 action to recover treble damages. ~~if appropriate.~~

18 (j) An offer to cure is:

19 (1) not admissible as evidence in a proceeding initiated under this
 20 section unless the offer to cure is delivered by a supplier to the
 21 consumer or a representative of the consumer before the supplier
 22 files the supplier's initial response to a complaint; and

23 (2) only admissible as evidence in a proceeding initiated under
 24 this section to prove that a supplier is not liable for attorney's fees
 25 under subsection (k).

26 If the offer to cure is timely delivered by the supplier, the supplier may
 27 submit the offer to cure as evidence to prove in the proceeding in
 28 accordance with the Indiana Rules of Trial Procedure that the supplier
 29 made an offer to cure.

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

35 (l) If a court finds that a person has knowingly violated section
 36 3(b)(20) of this chapter, the attorney general, in an action under
 37 subsection (c), may recover from the person on behalf of the state a
 38 civil penalty not exceeding one thousand dollars (\$1,000) per
 39 consumer. In determining the amount of the civil penalty in any action
 40 by the attorney general under this subsection, the court shall consider,
 41 among other relevant factors, the frequency and persistence of
 42 noncompliance by the debt collector, the nature of the noncompliance,



1 and the extent to which the noncompliance was intentional. A person
 2 may not be held liable in any action by the attorney general for a
 3 violation of section 3(b)(20) of this chapter if the person shows by a
 4 preponderance of evidence that the violation was not intentional and
 5 resulted from a bona fide error, notwithstanding the maintenance of
 6 procedures reasonably adapted to avoid the error. A person may not be
 7 held liable in any action for a violation of this chapter for contacting a
 8 person other than the debtor, if the contact is made in compliance with
 9 the Fair Debt Collection Practices Act.

10 (m) If a court finds that a person has knowingly or intentionally
 11 violated section 3(b)(40) of this chapter, the attorney general, in an
 12 action under subsection (c), may recover from the person on behalf of
 13 the state a civil penalty in accordance with IC 24-5-14.5-12(b). As
 14 specified in IC 24-5-14.5-12(b), a civil penalty recovered under
 15 IC 24-5-14.5-12(b) shall be deposited in the consumer protection
 16 division telephone solicitation fund established by IC 24-4.7-3-6 to be
 17 used for the administration and enforcement of IC 24-5-14.5. In
 18 addition to the recovery of a civil penalty in accordance with
 19 IC 24-5-14.5-12(b), the attorney general may also recover reasonable
 20 attorney fees and court costs from the person on behalf of the state.
 21 Those funds shall also be deposited in the consumer protection division
 22 telephone solicitation fund established by IC 24-4.7-3-6.

23 SECTION 2. IC 24-5-0.5-5 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. (a) No action may be
 25 brought under this chapter, except under section 4(c) of this chapter,
 26 unless (1) the deceptive act is incurable or (2) the consumer bringing
 27 the action shall have given notice in writing to the supplier within the
 28 ~~sooner earliest~~ of (i) ~~six (6) months~~ **one (1) year** after the initial
 29 discovery of the deceptive act, (ii) one (1) year following such
 30 consumer transaction, or (iii) any time limitation, not less than thirty
 31 (30) days, of any period of warranty applicable to the transaction,
 32 which notice shall state fully the nature of the alleged deceptive act and
 33 the actual damage suffered therefrom, and unless such deceptive act
 34 shall have become an uncured deceptive act. **A written notice by a**
 35 **consumer under this subsection is sufficient if it is reasonably**
 36 **calculated to provide notice of the general nature of the deceptive**
 37 **act and the resulting damages.**

38 (b) No action may be brought under this chapter except as expressly
 39 authorized in section 4(a), 4(b), or 4(c) of this chapter. Any action
 40 brought under this chapter may not be brought more than ~~two (2)~~ **six**
 41 **(6)** years after the occurrence of the deceptive act.

