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First Regular Session 117th General Assembly (2011)

**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 2010 Regular Session of the General Assembly.

**HOUSE ENROLLED ACT No. 1273**

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AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

SOURCE: IC 4-6-14-2; (11)HE1273.1.1. -->

SECTION 1. IC 4-6-14-2, AS ADDED BY P.L.84-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. As used in this chapter, "health care provider" means:

(1) a person listed in IC 16-39-7-1(a)(1) through IC 16-39-7-1(a)(11); **or**

(2) **a person licensed, certified, registered, or regulated by a board listed in IC 25-1-9-1.**

SOURCE: IC 9-13-2-19.5; (11)HE1273.1.2. --> SECTION 2. IC 9-13-2-19.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 19.5. "Charge back", for purposes of IC 9-23-3, has the meaning set forth in IC 9-23-3-0.2.**

SOURCE: IC 9-23-3-0.2; (11)HE1273.1.3. --> SECTION 3. IC 9-23-3-0.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.2. As used in this chapter, "charge back" means a manufacturer induced return of incentive payments to a manufacturer by a dealer. The term includes a manufacturer drawing funds from an account of a dealer.**

SOURCE: IC 9-23-3-15; (11)HE1273.1.4. --> SECTION 4. IC 9-23-3-15, AS AMENDED BY P.L.76-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. (a) It is an unfair practice for a manufacturer or distributor to:

(1) fail to pay all claims made by dealers for compensation for:

(A) delivery and preparation work; ~~and~~

(B) warranty work; **and**

(C) **incentive payments;**

within thirty (30) days after approval;

(2) fail to approve or disapprove the claims within thirty (30) days after receipt; or

(3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval.

(b) **Subject to subsection (c)**, a manufacturer or distributor may:

(1) audit claims made by a dealer **for warranty work or incentive payments for up to one (1) year after the date on which a claim is paid**; or

(2) charge back to a dealer any amounts paid on false or unsubstantiated claims **for warranty work or incentive payments.**

~~for up to two (2) years after the date on which a claim is paid. However, the limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim.~~ A manufacturer or distributor shall not discriminate among dealers with regard to auditing or charging back claims.

**(c) The limitations of subsection (b) do not apply if the manufacturer or distributor can prove fraud on a claim.**

SOURCE: IC 16-28-1-11; (11)HE1273.1.5. --> SECTION 5. IC 16-28-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) Unless an individual is certified under this section:

(1) the individual may not practice as a qualified medication aide **or a certified nurse aide**; and

(2) a facility may not employ the individual as a qualified medication aide **or a certified nurse aide.**

(b) ~~The council~~ **state department** shall do the following:

(1) Establish a program for the certification of qualified medication aides **and certified nurse aides** who work in facilities licensed under this article.

(2) Prescribe education and training programs for qualified medication aides **and certified nurse aides**, including course and inservice requirements. The training program must include a competency test that the individual must pass before being granted an initial certification.

(3) Determine the standards concerning the functions that may be performed by a qualified medication aide **and a certified nurse aide.**

(4) Establish annual certification fees for qualified medication

aides.

(5) Adopt rules under IC 4-22-2 necessary to implement and enforce this section.

(c) The **state** department shall maintain a registry of each individual who is:

(1) certified as a:

(A) qualified medication aide; **or**

(B) **certified nurse aide**; **or**

(2) **registered as a home health aide under rules adopted under IC 16-27-1-7.**

(d) The department may conduct hearings for violations of this section under IC 4-21.5.

SOURCE: IC 24-4.7-2-2; (11)HE1273.1.6. --> SECTION 6. IC 24-4.7-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) "Consumer" means a residential telephone subscriber who: ~~is an actual or a prospective:~~

(1) **for the telephone service received:**

(A) **has a place of primary use in Indiana**; **or**

(B) **is issued an Indiana telephone number or an Indiana identification number**; **and**

(2) **is an actual or a prospective:**

(+) (A) purchaser, lessee, or recipient of consumer goods or services; **or**

(-) (B) donor to a charitable organization.

(b) **The term includes a user of a prepaid wireless calling service (as defined in IC 6-2.5-1-22.4) who:**

(1) **is issued an Indiana telephone number or an Indiana identification number for the service**; **or**

(2) **purchases prepaid wireless calling service in a retail transaction that is sourced to Indiana (as determined under IC 6-2.5-12-16).**

SOURCE: IC 24-4.7-2-5; (11)HE1273.1.7. --> SECTION 7. IC 24-4.7-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. "Doing business in Indiana" means:

(1) **making**; **or**

(2) **causing others to make**;

telephone sales calls to consumers located in Indiana whether the telephone sales calls are made from a

location in Indiana or outside Indiana.

SOURCE: IC 24-4.7-2-7; (11)HE1273.1.8. --> SECTION 8. IC 24-4.7-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. "Listing" refers to the no telephone sales solicitation listing published by the division

under IC 24-4.7-3 that lists the ~~names~~ **telephone numbers** of ~~persons~~ **consumers** who do not wish to receive telephone sales calls.

SOURCE: IC 24-4.7-2-7.5; (11)HE1273.1.9. --> SECTION 9. IC 24-4.7-2-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Sec. 7.5. "Place of primary use", with respect to a telephone subscriber, means the street address representative of where the subscriber's use of the telephone service primarily occurs, which must be:**

**(1) the residential street address of the subscriber or, in the case of a subscriber of interconnected VOIP service, the subscriber's registered location (as defined in 47 CFR 9.3); and**

**(2) in the case of mobile telecommunications services (as defined in IC 6-8.1-15-7), within the licensed service area of the home service provider, as set forth in IC 6-8.1-15-8.**

SOURCE: IC 24-4.7-2-8; (11)HE1273.1.10. --> SECTION 10. IC 24-4.7-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. "Telephone number" means a residential telephone number **that:**

**(1) is assigned to a subscriber who has a place of primary use in Indiana; or**

**(2) otherwise represents an Indiana telephone number or is associated with an Indiana identification number.**

SOURCE: IC 24-4.7-2-9; (11)HE1273.1.11. --> SECTION 11. IC 24-4.7-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a)** "Telephone sales call" means a telephone call made to a consumer for any of the following purposes:

(1) Solicitation of a sale of consumer goods or services.

(2) Solicitation of a charitable contribution.

(3) Obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

**(b)** The term includes **any of the following:**

**(1) A call made by use of an automated dialing ~~or~~ device.**

**(2) A call made by use of a recorded message ~~devices.~~ device.**

**(3) Transmission of:**

**(A) a text message; or**

**(B) a graphic message;**

**using short message service (SMS).**

**(4) Transmission of:**

**(A) an image;**

**(B) a photograph; or**

**(C) a multimedia message;**

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**using multimedia messaging service (MMS).**

SOURCE: IC 24-4.7-3-4; (11)HE1273.1.12. --> SECTION 12. IC 24-4.7-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The division shall notify Indiana residents of the rights and duties created by this article, **including the right of any of the following consumers to place a telephone number on the listing established and maintained under section 1 of this chapter:**

**(1) Subscribers of interconnected VOIP service.**

**(2) Subscribers of mobile telecommunications service (as defined in IC 6-8.1-15-7).**

**(3) Users of a prepaid wireless calling service, as described in IC 24-4.7-2-2(b).**

SOURCE: IC 24-5-0.5-2; (11)HE1273.1.13. --> SECTION 13. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007, SECTION 165, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.

**(C) Collecting or attempting to collect a debt owed or due, or asserted to be owed or due, to another person.**

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement.

The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

**(C) A debt collector.**

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or

(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

(A) property;

(B) goods; or

(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

**(14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5)).**

**(15) "Debt collector" has the meaning set forth in 15 U.S.C. 1692a(6). The term does not include a person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.**

(b) As used in section 3(a)(15) and 3(a)(16) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SOURCE: IC 24-5-0.5-3; (11)HE1273.1.14. --> SECTION 14. IC 24-5-0.5-3, AS AMENDED BY P.L.1-2009, SECTION 137, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

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

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

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

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

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

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

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

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

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

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of

the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the

calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) The violation by a supplier of IC 24-3-4 concerning cigarettes for import or export.

(18) The act of a supplier in knowingly selling or reselling a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer, unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) The violation by a supplier of 47 U.S.C. 227, including any

rules or regulations issued under 47 U.S.C. 227.

**(20) The violation by a supplier of the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), including any rules or regulations issued under the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).**

**(21) A violation of IC 24-5-7 (concerning health spa services), as set forth in IC 24-5-7-17.**

**(22) A violation of IC 24-5-8 (concerning business opportunity transactions), as set forth in IC 24-5-8-20.**

**(23) A violation of IC 24-5-10 (concerning home consumer transactions), as set forth in IC 24-5-10-18.**

**(24) A violation of IC 24-5-11 (concerning home improvement contracts), as set forth in IC 24-5-11-14.**

**(25) A violation of IC 24-5-12 (concerning telephone solicitations), as set forth in IC 24-5-12-23.**

**(26) A violation of IC 24-5-13.5 (concerning buyback motor vehicles), as set forth in IC 24-5-13.5-14.**

**(27) A violation of IC 24-5-14 (concerning automatic dialing-announcing devices), as set forth in IC 24-5-14-13.**

**(28) A violation of IC 24-5-15 (concerning credit services organizations), as set forth in IC 24-5-15-11.**

**(29) A violation of IC 24-5-16 (concerning unlawful motor vehicle subleasing), as set forth in IC 24-5-16-18.**

**(30) A violation of IC 24-5-17 (concerning environmental marketing claims), as set forth in IC 24-5-17-14.**

**(31) A violation of IC 24-5-19 (concerning deceptive commercial solicitation), as set forth in IC 24-5-19-11.**

**(32) A violation of IC 24-5-21 (concerning prescription drug discount cards), as set forth in IC 24-5-21-7.**

**(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.**

**(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.**

**(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.**

**(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.**

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such

representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

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

(f) For purposes of subsection (a)(15) **and (a)(16)**, a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

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

SOURCE: IC 24-5-0.5-4; (11)HE1273.1.15. --> SECTION 15. IC 24-5-0.5-4, AS AMENDED BY HEA 1182-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4.

(a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

- (1) three (3) times the actual damages of the consumer suffering the loss; or
- (2) one thousand dollars (\$1,000).

Except as provided in subsection (j), the court may award reasonable

attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)), except for purchases of time shares and camping club memberships. **This subsection does not apply with respect to a deceptive act described in section 3(a)(20) of this chapter.** This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Except in the case of an extension of time granted by the attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10, any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. **This subsection does not apply with respect to a deceptive act**



**described in section 3(a)(20) of this chapter.** Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

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

(1) issue an injunction;

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

distribution to aggrieved consumers;

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

(4) provide for the appointment of a receiver.

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

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

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

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

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

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

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

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

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(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

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

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

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

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are

incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

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

SOURCE: IC 24-9-2-7; (11)HE1273.1.16. --> SECTION 16. IC 24-9-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) "Deceptive act" means an act or a practice as part of a consumer credit mortgage transaction involving real property located in Indiana (as defined in

**IC 24-9-3-7(a)), or of a real estate transaction (as defined in IC 24-9-3-7(b)), in which a person at the time of the transaction knowingly or intentionally:**

- (1) makes a material misrepresentation; or
- (2) conceals material information regarding the terms or conditions of the transaction.

(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

SOURCE: IC 25-1-7-3; (11)HE1273.1.17. --> SECTION 17. IC 25-1-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) **Except as provided in subsection (b)**, the division is responsible for the investigation of complaints concerning licensees.

**(b) The medical licensing board of Indiana shall investigate a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8. The division shall forward a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8 to the medical licensing board of Indiana for investigation by the board. However, if the complaint includes a violation in addition to a violation specified in IC 25-22.5-2-8, the division shall investigate the complaint in its entirety and notify the medical licensing board of Indiana of the investigation.**

SOURCE: IC 25-1-7-5; (11)HE1273.1.18. --> SECTION 18. IC 25-1-7-5, AS AMENDED BY P.L.206-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a)

Subsection (b)(1) does not apply to:

- (1) a complaint filed by:
  - (A) a member of any of the boards listed in section 1 of this chapter; or
  - (B) the Indiana professional licensing agency; or
- (2) a complaint filed under IC 25-1-5-4.

**(b) Except as provided in section 3(b) of this chapter**, the director has the following duties and powers:

(1) The director shall make an initial determination as to the merit of each complaint. A copy of a complaint having merit shall be submitted to the board having jurisdiction over the licensee's regulated occupation, that board thereby acquiring jurisdiction over the matter except as otherwise provided in this chapter.

(2) The director shall through any reasonable means notify the licensee of the nature and ramifications of the complaint and of the duty of the board to attempt to resolve the complaint through negotiation.

(3) The director shall report any pertinent information regarding

the status of the complaint to the complainant.

(4) The director may investigate any written complaint against a licensee. The investigation shall be

limited to those areas in which there appears to be a violation of statutes governing the regulated occupation.

(5) The director has the power to subpoena witnesses and to send for and compel the production of books, records, papers, and documents for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the director.

SOURCE: IC 25-1-7-10; (11)HE1273.1.19. --> SECTION 19. IC 25-1-7-10, AS AMENDED BY P.L.1-2007, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) **Except as provided in section 3(b) of this chapter**, all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.

(b) A person in the employ of the office of attorney general or any of the boards, or any person not a party to the complaint, may not disclose or further a disclosure of information concerning the complaint unless the disclosure is required:

- (1) under law; or
- (2) for the advancement of an investigation.

SOURCE: IC 25-22.5-2-5; (11)HE1273.1.20. --> SECTION 20. IC 25-22.5-2-5, AS AMENDED BY P.L.1-2006, SECTION 446, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. **Except for a penalty under section 8 of this chapter**, the funds obtained from registration and penalty fees shall, upon receipt thereof, be accounted for and paid over by the agency to the treasurer of state and be placed in the general fund of the state. The expenses of the board shall be paid from the general fund upon appropriation being made therefor in the manner required by law for the making of such appropriations. The amount to be expended by the board shall not exceed the amount collected by the board from all sources.

SOURCE: IC 25-35.6-1-8; (11)HE1273.1.21. --> SECTION 21. IC 25-35.6-1-8, AS AMENDED BY P.L.197-2007, SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) The board shall adopt rules under IC 4-22-2 to define the role of support personnel, including the following:

- (1) Supervisory responsibilities of the speech-language pathologist.
- (2) Ratio of support personnel to speech-language pathologists.

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- (3) Scope of duties and restrictions of responsibilities for each type of support personnel.
  - (4) Frequency, duration, and documentation of supervision.
  - (5) Education and training required to perform services.
  - (6) Procedures for renewing registration and terminating duties.

(b) A speech-language pathologist must meet the following qualifications to supervise speech-language pathology support personnel:

- (1) Hold a current license as a speech-language pathologist issued by the board.
- (2) ~~Have at least three (3) years of clinical experience.~~
- (3) **(2) Except for an individual who:**

**(A) before September 1, 1990, completed all the course work and obtained all the experience required to receive a life license from the department of education; and**

**(B) was issued a life license by the department of education;**

hold a certificate of clinical competence in speech-language pathology or its equivalent issued by a nationally recognized association for speech-language and hearing.

(c) Speech-language pathology support personnel may provide support services only under the supervision of a speech-language pathologist.

SOURCE: IC 27-7-3-15.5; (11)HE1273.1.22. --> SECTION 22. IC 27-7-3-15.5, AS AMENDED BY P.L.35-2010, SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Sec. 15.5. (a) This section applies to ~~a transaction that:~~ **the following transactions:**

- (1) ~~is a single family residential:~~ **A mortgage transaction (as defined in IC 24-9-3-7(a)) that:**
- (A) **is:**

**(i) a first lien purchase money mortgage transaction; or**

~~(B)~~ (ii) a refinancing transaction; and

~~(2)~~ (B) is closed by a closing agent after December 31, 2009.

(2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:

(A) does not involve a mortgage transaction described in subdivision (1); and

(B) is closed by a closing agent (as defined in IC 6-1.1-12-43(a)(2)) after December 31, 2011.

(b) For purposes of this subsection, a person described in this subsection is involved in a transaction to which this section applies if the person participates in or assists with, or will participate in or

assist with, a transaction to which this section applies. ~~Not later than September 1, 2009;~~ The department shall establish and maintain an electronic system for the collection and storage of the following information, to the extent applicable, concerning any of the following persons that have participated in or assisted with a transaction to which this section applies, or that will participate in or assist with a transaction to which this section applies:

(1) In the case of a transaction described in subsection (a)(1), the name and license number (under IC 23-2-5) of each loan brokerage business involved in the transaction.

(2) In the case of a transaction described in subsection (a)(1), the name and license or registration number of any mortgage loan originator who is:

(A) either licensed or registered under state or federal law as a mortgage loan originator consistent with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V); and

(B) involved in the transaction.

(3) The name and license number (under IC 25-34.1) of each:

(A) principal broker; and

(B) salesperson or broker-salesperson, if any; involved in the transaction.

(4) The following information:

(A) The:

(i) name of; and

~~(B)~~ (ii) code assigned by the National Association of Insurance Commissioners (NAIC) to; each title insurance underwriter involved in the transaction.

**(B) The type of title insurance policy issued in connection with the transaction.**

(5) The name and license number (under IC 27-1-15.6) of each title insurance agency and agent involved in the transaction as a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

(6) The following information:

(A) The name and:

~~(A)~~ (i) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or

~~(B)~~ (ii) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.

**(B) The name and registration number (under IC 25-34.1-11-10) of any appraisal management company**

**that performs appraisal management services (as defined in IC 25-34.1-11-3) in connection with the transaction.**

(7) In the case of a transaction described in subsection (a)(1), the name of the mortgagee creditor and, if the mortgagee creditor is required to be licensed under IC 24-4.4, the license number of the mortgagee creditor.

(8) In the case of a first lien purchase money mortgage transaction described in subsection (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is the subject of the transaction.

(9) In the case of a first lien purchase money mortgage transaction described in subsection (a)(1)(A)(i), the following information:

(A) The name of the buyer of the property that is the subject of the transaction.

**(B) The purchase price of the property that is the subject of the transaction.**

**(C) The loan amount of the mortgage transaction.****(10) In the case of a transaction described in subsection (a)(2), the following information:****(A) The name of the buyer of the property that is the subject of the transaction.****(B) The purchase price of the property that is the subject of the transaction.****(11) In the case of a transaction described in subsection (a)(1)(A)(ii), the following information:****(A) The name of the borrower in the mortgage transaction.****(B) The loan amount of the refinancing.**~~(10)~~ **(12) The:**

(A) name; and

(B) license number, certificate number, registration number, or other code, as appropriate;

of any other person that ~~participates in or assists with~~ **is involved in** a transaction to which this section applies, as the department may prescribe.

(c) The system established by the department under this section must include a form that:

(1) is uniformly accessible in an electronic format to the closing agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to do the following:

(A) Input information identifying the property that is the subject of the transaction by lot or parcel number, street address, or some other means of identification that the department determines:

(i) is sufficient to identify the property; and

(ii) is determinable by the closing agent.

(B) Subject to subsection (d) and to the extent determinable, input the **applicable** information described in subsection (b). ~~with respect to each person described in subsection (b) that participates in or assists with the transaction.~~(C) Respond to the following questions, **if applicable**:

(i) "On what date did you receive the closing instructions from the creditor in the transaction?".

(ii) "On what date did the transaction close?".

(D) Submit the form electronically to a data base maintained by the department.

(d) Not later than the time of the closing, each person described in subsection (b), other than a person described in subsection (b)(8), ~~or (b)(9), (b)(10), or (b)(11)~~, shall provide to the closing agent in the transaction the person's:

(1) legal name; and

(2) license number, certificate number, registration number, or NAIC code, as appropriate;

to allow the closing agent to comply with subsection (c)(2)(B). ~~☆ In the case of a transaction described in subsection (a)(1), the person described in subsection (b)(7) shall, with the cooperation of any person involved in the transaction and described in subsection (b)(6)(A) or (b)(6)(B), provide the information required by this subsection for any person described in subsection (b)(6) that appraises the property that is the subject of the transaction on behalf of the person described in subsection (b)(7). In the case of a transaction described in subsection (a)(1)(A)(ii), the person described in subsection (b)(7) shall also provide the information described in subsection (b)(11).~~ A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the principal broker for the person described in subsection (b)(3)(B). ~~In the case of a first lien purchase money mortgage transaction,~~ The closing agent shall determine the information described in subsection (b)(8), ~~and (b)(9), and (b)(10)~~ from the HUD-1 settlement statement, **or in the case of a transaction described in subsection (a)(2), from the contract or any other document executed by the parties in connection with the transaction.**(e) Except for a person described in subsection (b)(8), ~~or (b)(9), (b)(10), or (b)(11)~~, a person described in subsection (b) who fails to comply with subsection (d) is subject to a civil penalty of one hundred

dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same

manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

(2) contained in the data base described in subsection (c)(2)(D);  
except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2, **including emergency rules under IC 4-22-2-37.1**, to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:

(1) establish;

(2) collect; and

(3) change as necessary;

an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

(i) If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection (h), the department may:

(1) require the fee to be paid:

(A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and

(B) by the borrower, **the seller, or the buyer** in the transaction;

(2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs

in inputting the information and submitting the form described in subsection (c)(2); and

(3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.

SOURCE: IC 34-30-2-96.4; (11)HE1273.1.23. --> SECTION 23. IC 34-30-2-96.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 96.4. IC 24-5-0.5-4(l) (Concerning certain practices governed by the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.)).**

SOURCE: ; (11)HE1273.1.24. --> SECTION 24. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)]: **(a) Notwithstanding IC 25-35.6-1-8(b)(3), before amendment by this act on July 1, 2011, a speech-language pathologist is not required to hold a certificate of clinical competence in speech-language pathology or its equivalent issued by a nationally recognized association for speech-language and hearing to supervise speech-language pathology support personnel.**

**(b) This SECTION expires July 1, 2013.**

SOURCE: ; (11)HE1273.1.25. --> SECTION 25. [EFFECTIVE JULY 1, 2011] **(a) The Indiana professional licensing agency shall issue a license in speech-language pathology as follows:**

**(1) To each individual who applies for licensure and meets the following qualifications:**

**(A) Holds a license in speech and hearing therapy issued by the department of education.**

**(B) Has a master's degree in speech-language pathology or a related discipline.**

**(C) Has been employed as a speech-language pathologist for at least nine (9) months in the last**

five (5) years.

(2) To each individual who applies for licensure and meets all of the following qualifications:

(A) Holds a license in speech-language pathology issued by the department of education.

(B) Has:

(i) been employed as a speech-language pathologist for at least nine (9) months in the last

five (5) years; or

(ii) taken at least thirty-six (36) hours of continuing education approved by the department of education or

the health professions bureau after December 31, 2007, and before January 1, 2013.

(b) This SECTION expires July 1, 2013.

SOURCE: ; (11)HE1273.1.26. --> SECTION 26. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)] (a) 880 IAC 1-2.1-9(i) is void.

(b) The publisher of the Indiana Administrative Code and Indiana Register shall remove 880 IAC 1-2.1-9(i) from the Indiana Administrative Code.

(c) This SECTION expires January 1, 2012.

SOURCE: ; (11)HE1273.1.27. --> SECTION 27. An emergency is declared for this act.

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Figure

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