

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 17

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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:*

SECTION 1. IC 24-4-23 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

**Chapter 23. Age Verification for Adult Oriented Websites**

**Sec. 1. "Adult oriented website" means a publicly accessible website that publishes material harmful to minors, if at least one-third (1/3) of the images and videos published on the website depict material harmful to minors.**

**Sec. 2. "Adult oriented website operator" means a person that owns or operates an adult oriented website. The term does not include the following:**

- (1) A newspaper or news service that publishes news related information through a website.**
- (2) A cloud service provider.**
- (3) An Internet provider, an affiliate or subsidiary of an Internet provider, or a search engine that:
  - (A) solely provides access or connection to a website or other Internet content that is not under the control of that Internet service provider, affiliate or subsidiary, or search engine; and**
  - (B) is not responsible for creating or publishing the content that constitutes material harmful to minors.****

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**Sec. 3. "Material harmful to minors" means matter or a performance described in IC 35-49-2-2.**

**Sec. 4. "Minor" means a person less than eighteen (18) years of age.**

**Sec. 5. "Mobile credential" has the meaning set forth in IC 9-13-2-103.4.**

**Sec. 6. "Person" means a human being, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.**

**Sec. 7. "Reasonable age verification method" means a method of determining that an individual seeking to access a website containing material harmful to minors is not a minor by using one (1) or more of the following methods:**

**(1) A mobile credential.**

**(2) An independent third party age verification service that compares the identifying information entered by the individual who is seeking access with material that is available from a commercially available data base, or an aggregate of data bases, that is regularly used by government agencies and businesses for the purpose of age and identity verification.**

**(3) Any commercially reasonable method that relies on public or private transactional data to verify the age of the individual attempting to access the material.**

**Sec. 8. "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. The term includes records that relate to a mortgage, education, or employment.**

**Sec. 9. "Verification information" means all information, data, and documents provided by an individual for the purposes of verification of identity or age under this chapter.**

**Sec. 10. An adult oriented website operator may not knowingly or intentionally publish an adult oriented website unless the adult oriented website operator uses a reasonable age verification method to prevent a minor from accessing the adult oriented website.**

**Sec. 11. (a) If:**

**(1) an adult oriented website operator knowingly or intentionally publishes an adult oriented website in violation of section 10 of this chapter; and**

**(2) a minor accesses the adult oriented website;**

**the parent or guardian of the minor who accessed the adult**



oriented website may bring an action against the adult oriented website operator.

(b) A parent or guardian who prevails in an action described in this section is entitled to:

(1) either:

(A) actual damages; or

(B) damages of up to five thousand dollars (\$5,000);

(2) injunctive relief; and

(3) court costs, reasonable attorney's fees, and other reasonable expenses of litigation, including expert witness fees.

**Sec. 12. (a)** If an adult oriented website operator publishes an adult oriented website in violation of section 10 of this chapter, any person may bring an action to seek injunctive relief.

(b) A person that brings an action for injunctive relief under this section and prevails is entitled to:

(1) injunctive relief; and

(2) court costs, reasonable attorney's fees, and other reasonable expenses of litigation, including expert witness fees.

**Sec. 13. (a)** This section applies to a person that uses or purports to use a reasonable age verification method to grant or deny access to an adult oriented website.

(b) A person to which this section applies, and any third party verification service used by a person to which this section applies, may not retain identifying information of the person seeking access to an adult oriented website, unless retention of the identifying information is required by a court order.

(c) An individual whose identifying information is retained in violation of this section may bring an action against the person that unlawfully retained the individual's identifying information. An individual who prevails in an action described in this section is entitled to:

(1) either:

(A) actual damages; or

(B) damages of up to five thousand dollars (\$5,000);

(2) injunctive relief; and

(3) court costs, reasonable attorney's fees, and other reasonable expenses of litigation, including expert witness fees.

**Sec. 14.** Adult oriented website operators must use commercially reasonable methods to secure all information collected and



transmitted under this chapter.

**Sec. 15.** The attorney general may bring an action under this chapter to obtain any or all of the following against an adult oriented website, accessible by an Indiana resident, that does not implement or properly use a reasonable age verification method:

- (1) An injunction to enjoin future violations of this chapter.
- (2) A civil penalty of not more than two hundred fifty thousand dollars (\$250,000).
- (3) The attorney general's reasonable costs in:
  - (A) the investigation of the violations under this chapter; and
  - (B) maintaining the action.

**Sec. 16.** When the attorney general has reasonable cause to believe that any person has engaged in, is engaging in, or is about to engage in a violation of this chapter, the attorney general is empowered to issue civil investigative demands under IC 4-6-3-3 to investigate the suspected violation.

**Sec. 17.** In an action filed under sections 11, 12, 13, and 15 of this chapter, the verification information of a minor who accessed the adult oriented website shall remain confidential. The clerk of the court shall place all records of the minor who accessed the adult oriented website in an envelope marked "confidential" inside the court's file pertaining to the minor. Records placed in the confidential envelope may only be released to:

- (1) the judge or any authorized staff member;
- (2) a party and the party's attorney;
- (3) the parents of a minor who accessed the adult oriented website; or
- (4) any person having a legitimate interest in the work of the court or in a particular case as determined by the presiding judge or their successor who shall consider the best interests, safety, and welfare of the minor.

SECTION 2. IC 24-4.9-2-10, AS ADDED BY P.L.125-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 10. "Personal information" means:

- (1) a Social Security number that is not encrypted or redacted; or
- (2) an individual's first and last names, or first initial and last name, and one (1) or more of the following data elements that are not encrypted or redacted:
  - (A) A driver's license number.
  - (B) A state identification card number.
  - (C) A credit card number.



(D) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account; **or**

**(3) information collected by an adult oriented website operator, or their designee, under IC 24-4-23.**

The term does not include information that is lawfully obtained from publicly available information or from federal, state, or local government records lawfully made available to the general public.

SECTION 3. IC 24-5-0.5-3, AS AMENDED BY P.L.34-2022, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.

(b) Without limiting the scope of subsection (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.
- (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

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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 an alternate business name or an assumed business name (as described in IC 23-0.5-3-4) 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 an alternate business name or assumed business name (as described in IC 23-0.5-3-4) in a directory assistance data base 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 real property 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.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

(38) A violation of IC 24-5-15.5 (concerning collection actions of a plaintiff debt buyer), as set forth in IC 24-5-15.5-6.

(39) A violation of IC 24-14 (concerning towing services), as set forth in IC 24-14-10-1.

(40) A violation of IC 24-5-14.5 (concerning misleading or



inaccurate caller identification information), as set forth in IC 24-5-14.5-12.

(41) A violation of IC 24-5-27 (concerning intrastate inmate calling services), as set forth in IC 24-5-27-27.

**(42) A violation of IC 24-4-23 (concerning the security of information collected and transmitted by an adult oriented website operator), as set forth in IC 24-4-23-14.**

(c) 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.

(d) 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.

(e) 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.

(f) For purposes of subsection (b)(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.

(g) For purposes of subsection (b)(15) and (b)(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 an alternate business name or assumed business name of a supplier in its directory or directory assistance data base 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.

(h) For purposes of subsection (b)(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.

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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