



February 11, 2021

HOUSE BILL No. 1125

DIGEST OF HB 1125 (Updated February 9, 2021 3:31 pm - DI 123)

Citations Affected: IC 24-5.

Synopsis: Deceptive lead generation. Makes false, misleading, or deceptive advertisements for claims related to medical devices and legend drugs and certain other actions a deceptive act.

Effective: May 15, 2021.

Lehman

January 7, 2021, read first time and referred to Committee on Judiciary.
February 11, 2021, amended, reported — Do Pass.

HB 1125—LS 6875/DI 131



February 11, 2021

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.

HOUSE BILL No. 1125

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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

1 SECTION 1. IC 24-5-26.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 MAY 15, 2021]:

4 **Chapter 26.5. Deceptive Lead Generation**

5 **Sec. 1. As used in this chapter, "commercial communication"**
6 **means any written or oral statement, illustration, or depiction,**
7 **whether in English or another language, that is designed to create**
8 **interest in procuring legal services, whether it appears on or in a**
9 **label, package, package insert, radio, television, brochure,**
10 **newspaper, magazine, pamphlet, leaflet, circular, mailer, book**
11 **insert, free standing insert, letter, catalog, poster, chart, billboard,**
12 **public transit card, point of purchase display, film slide, audio**
13 **program transmitted over a telephone system, telemarketing**
14 **script, on-hold script, upsell script, training materials provided to**
15 **a telemarketing firm, program length commercial, the Internet,**
16 **cellular network, or any other medium, as well as promotional**
17 **materials, items, and Internet web sites.**

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1 **Sec. 2.** As used in this chapter, "consumer" refers to an
 2 individual who views a commercial communication for personal or
 3 familial purposes.

4 **Sec. 3.** As used in this chapter, "lead generation" refers to the
 5 use of commercial communication to initiate consumer interest or
 6 inquiry into legal services provided in Indiana or another
 7 jurisdiction to redress an alleged injury from a medical device or
 8 legend drug.

9 **Sec. 4.** As used in this chapter, "legend drug" has the meaning
 10 set forth in IC 16-18-2-199.

11 **Sec. 5.** As used in this chapter, "manufacturer" means either of
 12 the following:

13 (1) A person that is engaged in a business to produce, create,
 14 make, or construct any product or component of a product,
 15 and that:

16 (A) designs, manufactures, or formulates; or

17 (B) engages another person to design, manufacture, or
 18 formulate;

19 a medical device or component or part of a medical device.

20 (2) A person that, by compounding, cultivating, harvesting, or
 21 mixing, or by another process produces or prepares legend
 22 drugs. The term includes a person that:

23 (A) prepares legend drugs in dosage forms by mixing,
 24 compounding, encapsulating, or entableting, or by another
 25 process; or

26 (B) packages or repackages legend drugs.

27 The term does not include a pharmacist or a practitioner (as
 28 defined in IC 16-42-19-5).

29 **Sec. 6.** As used in this chapter, "medical device" refers to an
 30 instrument, an apparatus, an implement, a machine, a contrivance,
 31 an implant, an in vitro reagent, or another similar or related
 32 article, including a component part or accessory:

33 (1) that is recognized in the official National Formulary or the
 34 United States Pharmacopoeia, or any supplement to them;

35 (2) that is intended for use in the diagnosis of disease or other
 36 conditions, or in the cure, mitigation, treatment, or prevention
 37 of disease, in a human being or an animal; or

38 (3) that:

39 (A) is intended to affect the structure or any function of the
 40 body of a human being or an animal;

41 (B) does not achieve its primary intended purpose through
 42 chemical action within or on the body of a human being or



- 1 **an animal; and**
 2 **(C) is not dependent upon being metabolized for the**
 3 **achievement of its primary intended purpose.**
 4 **Sec. 7. As used in this chapter, "seller" means a person that, in**
 5 **the course of business conducted for that purpose, does either of**
 6 **the following:**
 7 **(1) Sells, distributes, rents, leases, prepares, blends, packages,**
 8 **labels, or otherwise is involved in placing a medical device or**
 9 **legend drug into the stream of commerce.**
 10 **(2) Installs, repairs, refurbishes, reconditions, or maintains a**
 11 **medical device.**
 12 **Sec. 8. As used in this chapter, "sponsor" means a person on**
 13 **whose behalf a commercial communication is conducted to**
 14 **promote or advertise legal services.**
 15 **Sec. 9. (a) It is a deceptive act for a person to engage in lead**
 16 **generation that is false, deceptive, or misleading.**
 17 **(b) Deceptive acts under this chapter may include the following:**
 18 **(1) Advertisements or other commercial communications**
 19 **that:**
 20 **(A) cause, or are likely to cause, consumers to fail to use or**
 21 **to discontinue the consumers' medications; or**
 22 **(B) remove a medical device;**
 23 **without appropriate medical advice from a person who is**
 24 **independent from the lead generator and any person to whom**
 25 **the consumer would be referred.**
 26 **(2) Advertisements or other commercial communications that**
 27 **open with sensationalized warnings or alerts that may mislead**
 28 **consumers to believe the consumers are watching a**
 29 **government sanctioned medical alert, health alert, consumer**
 30 **alert, or public service announcement.**
 31 **(3) Advertisements or other commercial communications**
 32 **that:**
 33 **(A) misrepresent the risks associated with a medical device**
 34 **or legend drug;**
 35 **(B) leave consumers with the false impression that the risks**
 36 **of the medical device or legend drug exceed the benefits; or**
 37 **(C) leave consumers with the false impression that the**
 38 **United States Food and Drug Administration has recalled**
 39 **a medical device or legend drug that is the subject of the**
 40 **advertisement or other commercial communication.**
 41 **(c) A claim misrepresents a fact or is false if the claim is not**
 42 **substantiated by competent and reliable scientific evidence.**



1 **Sec. 10. It is a deceptive act for a person engaged in lead**
 2 **generation to fail to make the following written and oral**
 3 **disclosures to a consumer who responds to an advertisement or**
 4 **other commercial communication subject to this chapter:**

5 **(1) Disclosures:**

6 **(A) that a case will be referred to another attorney or law**
 7 **firm to represent a consumer responding to the**
 8 **commercial communication; and**

9 **(B) identifying the attorney or law firm that will represent**
 10 **a consumer responding to the commercial communication;**
 11 **if the sponsor of the commercial communication will not**
 12 **represent a consumer responding to the commercial**
 13 **communication.**

14 **(2) Any other disclosure required under the rules adopted by**
 15 **the attorney general under section 13 of this chapter that the**
 16 **attorney general determines is necessary to permit a**
 17 **consumer to make an informed consent to a referral.**

18 **Sec. 11. It is a deceptive act for a person engaged in lead**
 19 **generation to regulate a lawyer's professional judgment in**
 20 **rendering legal service.**

21 **Sec. 12. The provisions set forth in this chapter also apply to**
 22 **deceptive acts by a lawyer referral service that receives any benefit**
 23 **or consideration for the direct or indirect referral of prospective**
 24 **clients to lawyers or law firms.**

25 **Sec. 13. The attorney general may adopt rules under IC 4-22-2,**
 26 **including emergency rules in the manner provided under**
 27 **IC 4-22-2-37.1, to carry out this chapter. An emergency rule**
 28 **adopted by the attorney general under this section expires on the**
 29 **earlier of the following dates:**

30 **(1) The expiration date in the emergency rule.**

31 **(2) The date the emergency rule is amended or repealed by a**
 32 **later rule adopted under IC 4-22-2-24 through IC 4-22-2-36**
 33 **or under IC 4-22-2-37.1.**

34 **Sec. 14. A deceptive act under this chapter is an incurable**
 35 **deceptive act.**

36 **Sec. 15. (a) A manufacturer or seller of medical devices or**
 37 **legend drugs or a consumer may bring an action against any**
 38 **combination of persons that authorize, finance, sponsor,**
 39 **participate in, or otherwise benefit from a deceptive act under this**
 40 **chapter. In the action the court may do any combination of the**
 41 **following:**

42 **(1) Issue an injunction.**



- 1 **(2) Order the person engaged in lead generation to reimburse**
2 **money unlawfully received by any person from the aggrieved**
3 **consumers to be held in escrow for distribution to aggrieved**
4 **consumers, void or limit the application of contracts or**
5 **clauses resulting from deceptive acts, and order other**
6 **restitution as the court determines appropriate.**
7 **(3) For a knowing or intentional violation against a consumer**
8 **who is at least sixty (60) years of age, increase the amount**
9 **ordered under subdivision (2) in any amount up to three (3)**
10 **times the amount of damages incurred.**
11 **(b) A manufacturer, seller, or consumer that commences an**
12 **action under this section shall serve the attorney general with a**
13 **copy of the complaint. The attorney general may join an action**
14 **under section 15 of this chapter with the action commenced by the**
15 **manufacturer, seller, or consumer.**
16 **Sec. 16. A court with jurisdiction over an action under section**
17 **15 of this chapter may order the violator to pay court costs and**
18 **reasonable investigation and litigation fees incurred by the**
19 **attorney general, a manufacturer or seller of medical devices or**
20 **legend drugs, or a consumer who prevails in the action.**
21 **Sec. 17. An action brought under this chapter for a deceptive act**
22 **may not be brought more than two (2) years after the occurrence**
23 **of the deceptive act.**
24 **Sec. 18. (a) Nothing in this chapter limits or otherwise affects**
25 **the authority of the supreme court to regulate the practice of law,**
26 **establish and enforce rules of professional conduct for attorneys,**
27 **law firms, and legal referral services, or discipline individuals**
28 **admitted to practice law in Indiana.**
29 **(b) This chapter does not apply to attorneys licensed to practice**
30 **law in the state of Indiana.**
31 **SECTION 2. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1125, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 11, delete "has the meaning" and insert "**means either of the following:**

(1) A person that is engaged in a business to produce, create, make, or construct any product or component of a product, and that:

(A) designs, manufactures, or formulates; or

(B) engages another person to design, manufacture, or formulate;

a medical device or component or part of a medical device.

(2) A person that, by compounding, cultivating, harvesting, or mixing, or by another process produces or prepares legend drugs. The term includes a person that:

(A) prepares legend drugs in dosage forms by mixing, compounding, encapsulating, or entableting, or by another process; or

(B) packages or repackages legend drugs.

The term does not include a pharmacist or a practitioner (as defined in IC 16-42-19-5)."

Page 2, delete line 12.

Page 2, line 13, delete "has the" and insert "**refers to an instrument, an apparatus, an implement, a machine, a contrivance, an implant, an in vitro reagent, or another similar or related article, including a component part or accessory:**

(1) that is recognized in the official National Formulary or the United States Pharmacopoeia, or any supplement to them;

(2) that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in a human being or an animal; or

(3) that:

(A) is intended to affect the structure or any function of the body of a human being or an animal;

(B) does not achieve its primary intended purpose through chemical action within or on the body of a human being or an animal; and

(C) is not dependent upon being metabolized for the achievement of its primary intended purpose."

Page 2, delete line 14.

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Page 2, line 15, delete "has the meaning set" and insert **"means a person that, in the course of business conducted for that purpose, does either of the following:**

(1) Sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a medical device or legend drug into the stream of commerce.

(2) Installs, repairs, refurbishes, reconditions, or maintains a medical device."

Page 2, delete line 16, begin a new paragraph and insert:

"Sec. 8. As used in this chapter, "sponsor" means a person on whose behalf a commercial communication is conducted to promote or advertise legal services."

Page 2, line 17, delete "Sec. 8." and insert **"Sec. 9."**

Page 2, line 31, delete "alert or" and insert **"alert, health alert, consumer alert, or"**.

Page 3, line 3, delete "Sec. 9." and insert **"Sec. 10."**

Page 3, delete lines 7 through 25, begin a new line block indented and insert:

"(1) Disclosures:

(A) that a case will be referred to another attorney or law firm to represent a consumer responding to the commercial communication; and

(B) identifying the attorney or law firm that will represent a consumer responding to the commercial communication; if the sponsor of the commercial communication will not represent a consumer responding to the commercial communication."

Page 3, line 26, delete "(5)" and insert **"(2)"**.

Page 3, line 27, delete "section 12" and insert **"section 13"**.

Page 3, line 30, delete "Sec. 10." and insert **"Sec. 11."**

Page 3, line 33, delete "Sec. 11." and insert **"Sec. 12."**

Page 3, line 36, delete "firms, including the following:" and insert **"firms."**

Page 3, delete lines 37 through 42.

Page 4, delete lines 1 through 8.

Page 4, line 9, delete "Sec. 12." and insert **"Sec. 13."**

Page 4, between lines 17 and 18, begin a new paragraph and insert:

"Sec. 14. A deceptive act under this chapter is an incurable deceptive act."

Page 4, delete lines 18 through 33.

Page 4, line 34, delete "Sec. 14. (a) If the attorney general does not file an action under" and insert **"Sec. 15. (a) A"**.



Page 4, line 35, delete "section 13 of this chapter, a".

Page 4, line 36, delete "to" and insert **"against any combination of persons that authorize, finance, sponsor, participate in, or otherwise benefit from a deceptive act under this chapter. In the action the court may do any combination of the following:**

(1) Issue an injunction.

(2) Order the person engaged in lead generation to reimburse money unlawfully received by any person from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers, void or limit the application of contracts or clauses resulting from deceptive acts, and order other restitution as the court determines appropriate.

(3) For a knowing or intentional violation against a consumer who is at least sixty (60) years of age, increase the amount ordered under subdivision (2) in any amount up to three (3) times the amount of damages incurred."

Page 4, delete lines 37 through 41, begin a new paragraph and insert:

"(b) A manufacturer, seller, or consumer that commences an action under this section shall serve the attorney general with a copy of the complaint. The attorney general may join an action under section 15 of this chapter with the action commenced by the manufacturer, seller, or consumer."

Page 4, line 42, delete "Sec. 15." and insert **"Sec. 16."**

Page 5, line 1, delete "13 or 14" and insert **"15"**.

Page 5, delete lines 5 through 42, begin a new paragraph, and insert:

"Sec. 17. An action brought under this chapter for a deceptive act may not be brought more than two (2) years after the occurrence of the deceptive act.

Sec. 18. (a) Nothing in this chapter limits or otherwise affects the authority of the supreme court to regulate the practice of law, establish and enforce rules of professional conduct for attorneys, law firms, and legal referral services, or discipline individuals admitted to practice law in Indiana.

(b) This chapter does not apply to attorneys licensed to practice law in the state of Indiana."

Delete pages 6 through 11.

Page 12, delete line 1.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.



(Reference is to HB 1125 as introduced.)

TORR

Committee Vote: yeas 11, nays 0.

