

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 ENROLLED ACT No. 1125

AN ACT to amend the Indiana Code concerning civil procedure.

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

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

Chapter 26.5. Deceptive Lead Generation

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

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

Sec. 3. As used in this chapter, "lead generation" refers to the use of commercial communication to initiate consumer interest or

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inquiry into legal services provided in Indiana or another jurisdiction to redress an alleged injury from a medical device or legend drug.

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

Sec. 5. As used in this chapter, "manufacturer" 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).

Sec. 6. As used in this chapter, "medical device" 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.

Sec. 7. As used in this chapter, "seller" 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.

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.

Sec. 9. (a) It is a deceptive act for a person to engage in lead generation that is false, deceptive, or misleading.

(b) Deceptive acts under this chapter may include lead generation that contains the following:

- (1) Advertisements or other commercial communications that cause, or are likely to cause, consumers to:
 - (A) fail to use or to discontinue the consumers' medications; or
 - (B) remove a medical device;

without appropriate medical advice from a person who is independent from the lead generator and any person to whom the consumer would be referred.

(2) Advertisements or other commercial communications that open with sensationalized warnings or alerts that may mislead consumers to believe the consumers are watching a government sanctioned medical alert, health alert, consumer alert, or public service announcement.

(3) Advertisements or other commercial communications that:

- (A) misrepresent the risks or benefits associated with a medical device or legend drug that is the subject of the lead generation advertisement or other commercial communication;
- (B) leave consumers with the false impression that the risks of the medical device or legend drug exceed the benefits; or
- (C) leave consumers with the false impression that the United States Food and Drug Administration has recalled a medical device or legend drug that is the subject of the advertisement or other commercial communication.

(c) A claim misrepresents a fact or is false if the claim is not substantiated by:

- (1) competent and reliable scientific or medical evidence; or
- (2) a final adjudication on the merits, including appeals.



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

(1) Disclosures:

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

(B) that identify the attorney or law firm that will represent a consumer responding to the advertisement or other commercial communication, if known; and

(C) that identify the sponsor of the advertisement or other commercial communication.

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

Sec. 11. Regardless of whether a client consumer enters into an agreement, it is a deceptive act for a person engaged in lead generation to engage in other conduct that creates a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for a client consumer will be materially limited.

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

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

(1) The expiration date in the emergency rule.

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

Sec. 14. (a) A manufacturer or seller of medical devices or legend drugs or a consumer may bring an action 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.

(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 this section commenced by the manufacturer, seller, or consumer.

Sec. 15. A court with jurisdiction over an action under section 14 of this chapter may order the violator to pay court costs and reasonable litigation fees incurred.

Sec. 16. 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. 17. (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 the practice of law in Indiana.

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

(c) Subsection (b) does not prohibit an injunction against a deceptive act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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