

HOUSE BILL No. 1191

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-0.5-3; IC 32-29.5; IC 32-31.

Synopsis: Land contracts and landlord-tenant matters. Defines "principal dwelling land contract" (contract) as a land contract for the sale of real property: (1) designed for the occupancy of one to two families; and (2) that is or will be occupied by the buyer as the buyer's principal dwelling. Provides that the seller under a contract must provide the buyer with certain disclosures at least 10 days before the contract is executed. Sets forth disclosures that must be included in a contract. Provides a three day cancellation period for both the buyer and seller. Provides that a violation of disclosure provisions constitutes a deceptive act under the deceptive consumer sales act. Requires notice to a tenant regarding lease termination to include a statement about failure to pay fees. Provides that notice is not required to terminate a formal or informal lease in certain situations. Requires a landlord to give a tenant at least 60 days written notice before modifying the rental agreement or increasing the rent.

Effective: July 1, 2020.

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January 13, 2020, read first time and referred to Committee on Judiciary.



Second Regular Session of the 121st General Assembly (2020)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1191

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

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

1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.211-2019,
2 SECTION 33, AND AS AMENDED BY P.L.242-2019, SECTION 6,
3 AND AS AMENDED BY THE TECHNICAL CORRECTIONS BILL
4 OF THE 2020 GENERAL ASSEMBLY, IS CORRECTED AND
5 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:
6 Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive
7 act, omission, or practice in connection with a consumer transaction.
8 Such an act, omission, or practice by a supplier is a violation of this
9 chapter whether it occurs before, during, or after the transaction. An
10 act, omission, or practice prohibited by this section includes both
11 implicit and explicit misrepresentations.

12 (b) Without limiting the scope of subsection (a), the following acts,
13 and the following representations as to the subject matter of a
14 consumer transaction, made orally, in writing, or by electronic
15 communication, by a supplier, are deceptive acts:

16 (1) That such subject of a consumer transaction has sponsorship,
17 approval, performance, characteristics, accessories, uses, or



- 1 benefits it does not have which the supplier knows or should
2 reasonably know it does not have.
- 3 (2) That such subject of a consumer transaction is of a particular
4 standard, quality, grade, style, or model, if it is not and if the
5 supplier knows or should reasonably know that it is not.
- 6 (3) That such subject of a consumer transaction is new or unused,
7 if it is not and if the supplier knows or should reasonably know
8 that it is not.
- 9 (4) That such subject of a consumer transaction will be supplied
10 to the public in greater quantity than the supplier intends or
11 reasonably expects.
- 12 (5) That replacement or repair constituting the subject of a
13 consumer transaction is needed, if it is not and if the supplier
14 knows or should reasonably know that it is not.
- 15 (6) That a specific price advantage exists as to such subject of a
16 consumer transaction, if it does not and if the supplier knows or
17 should reasonably know that it does not.
- 18 (7) That the supplier has a sponsorship, approval, or affiliation in
19 such consumer transaction the supplier does not have, and which
20 the supplier knows or should reasonably know that the supplier
21 does not have.
- 22 (8) That such consumer transaction involves or does not involve
23 a warranty, a disclaimer of warranties, or other rights, remedies,
24 or obligations, if the representation is false and if the supplier
25 knows or should reasonably know that the representation is false.
- 26 (9) That the consumer will receive a rebate, discount, or other
27 benefit as an inducement for entering into a sale or lease in return
28 for giving the supplier the names of prospective consumers or
29 otherwise helping the supplier to enter into other consumer
30 transactions, if earning the benefit, rebate, or discount is
31 contingent upon the occurrence of an event subsequent to the time
32 the consumer agrees to the purchase or lease.
- 33 (10) That the supplier is able to deliver or complete the subject of
34 the consumer transaction within a stated period of time, when the
35 supplier knows or should reasonably know the supplier could not.
36 If no time period has been stated by the supplier, there is a
37 presumption that the supplier has represented that the supplier
38 will deliver or complete the subject of the consumer transaction
39 within a reasonable time, according to the course of dealing or the
40 usage of the trade.
- 41 (11) That the consumer will be able to purchase the subject of the
42 consumer transaction as advertised by the supplier, if the supplier



- 1 does not intend to sell it.
- 2 (12) That the replacement or repair constituting the subject of a
 3 consumer transaction can be made by the supplier for the estimate
 4 the supplier gives a customer for the replacement or repair, if the
 5 specified work is completed and:
- 6 (A) the cost exceeds the estimate by an amount equal to or
 7 greater than ten percent (10%) of the estimate;
 - 8 (B) the supplier did not obtain written permission from the
 9 customer to authorize the supplier to complete the work even
 10 if the cost would exceed the amounts specified in clause (A);
 - 11 (C) the total cost for services and parts for a single transaction
 12 is more than seven hundred fifty dollars (\$750); and
 - 13 (D) the supplier knew or reasonably should have known that
 14 the cost would exceed the estimate in the amounts specified in
 15 clause (A).
- 16 (13) That the replacement or repair constituting the subject of a
 17 consumer transaction is needed, and that the supplier disposes of
 18 the part repaired or replaced earlier than seventy-two (72) hours
 19 after both:
- 20 (A) the customer has been notified that the work has been
 21 completed; and
 - 22 (B) the part repaired or replaced has been made available for
 23 examination upon the request of the customer.
- 24 (14) Engaging in the replacement or repair of the subject of a
 25 consumer transaction if the consumer has not authorized the
 26 replacement or repair, and if the supplier knows or should
 27 reasonably know that it is not authorized.
- 28 (15) The act of misrepresenting the geographic location of the
 29 supplier by listing an alternate business name or an assumed
 30 business name (as described in IC 23-0.5-3-4) in a local telephone
 31 directory if:
- 32 (A) the name misrepresents the supplier's geographic location;
 - 33 (B) the listing fails to identify the locality and state of the
 34 supplier's business;
 - 35 (C) calls to the local telephone number are routinely forwarded
 36 or otherwise transferred to a supplier's business location that
 37 is outside the calling area covered by the local telephone
 38 directory; and
 - 39 (D) the supplier's business location is located in a county that
 40 is not contiguous to a county in the calling area covered by the
 41 local telephone directory.
- 42 (16) The act of listing an alternate business name or assumed



- 1 business name (as described in IC 23-0.5-3-4) in a directory
 2 assistance data base if:
- 3 (A) the name misrepresents the supplier's geographic location;
 - 4 (B) calls to the local telephone number are routinely forwarded
 5 or otherwise transferred to a supplier's business location that
 6 is outside the local calling area; and
 - 7 (C) the supplier's business location is located in a county that
 8 is not contiguous to a county in the local calling area.
- 9 (17) The violation by a supplier of IC 24-3-4 concerning
 10 cigarettes for import or export.
- 11 (18) The act of a supplier in knowingly selling or reselling a
 12 product to a consumer if the product has been recalled, whether
 13 by the order of a court or a regulatory body, or voluntarily by the
 14 manufacturer, distributor, or retailer, unless the product has been
 15 repaired or modified to correct the defect that was the subject of
 16 the recall.
- 17 (19) The violation by a supplier of 47 U.S.C. 227, including any
 18 rules or regulations issued under 47 U.S.C. 227.
- 19 (20) The violation by a supplier of the federal Fair Debt
 20 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
 21 rules or regulations issued under the federal Fair Debt Collection
 22 Practices Act (15 U.S.C. 1692 et seq.).
- 23 (21) A violation of IC 24-5-7 (concerning health spa services), as
 24 set forth in IC 24-5-7-17.
- 25 (22) A violation of IC 24-5-8 (concerning business opportunity
 26 transactions), as set forth in IC 24-5-8-20.
- 27 (23) A violation of IC 24-5-10 (concerning home consumer
 28 transactions), as set forth in IC 24-5-10-18.
- 29 (24) A violation of IC 24-5-11 (concerning real property
 30 improvement contracts), as set forth in IC 24-5-11-14.
- 31 (25) A violation of IC 24-5-12 (concerning telephone
 32 solicitations), as set forth in IC 24-5-12-23.
- 33 (26) A violation of IC 24-5-13.5 (concerning buyback motor
 34 vehicles), as set forth in IC 24-5-13.5-14.
- 35 (27) A violation of IC 24-5-14 (concerning automatic
 36 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 37 (28) A violation of IC 24-5-15 (concerning credit services
 38 organizations), as set forth in IC 24-5-15-11.
- 39 (29) A violation of IC 24-5-16 (concerning unlawful motor
 40 vehicle subleasing), as set forth in IC 24-5-16-18.
- 41 (30) A violation of IC 24-5-17 (concerning environmental
 42 marketing claims), as set forth in IC 24-5-17-14.



- 1 (31) A violation of IC 24-5-19 (concerning deceptive commercial
2 solicitation), as set forth in IC 24-5-19-11.
- 3 (32) A violation of IC 24-5-21 (concerning prescription drug
4 discount cards), as set forth in IC 24-5-21-7.
- 5 (33) A violation of IC 24-5-23.5-7 (concerning real estate
6 appraisals), as set forth in IC 24-5-23.5-9.
- 7 (34) A violation of IC 24-5-26 (concerning identity theft), as set
8 forth in IC 24-5-26-3.
- 9 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
10 as set forth in IC 24-5.5-6-1.
- 11 (36) A violation of IC 24-8 (concerning promotional gifts and
12 contests), as set forth in IC 24-8-6-3.
- 13 (37) A violation of IC 21-18.5-6 (concerning representations
14 made by a postsecondary credit bearing proprietary educational
15 institution), as set forth in IC 21-18.5-6-22.5.
- 16 *(38) A violation of IC 24-5-15.5 (concerning collection actions of
17 a plaintiff debt buyer), as set forth in IC 24-5-15.5-6.*
- 18 ~~(38)~~ (39) A violation of IC 24-14 (concerning towing services), as
19 set forth in IC 24-14-10-1.
- 20 ~~(38)~~ (40) A violation of IC 24-5-14.5 (concerning misleading or
21 inaccurate caller identification information), as set forth in
22 IC 24-5-14.5-12.
- 23 **(41) A violation of IC 32-29.5-3 (concerning principal dwelling
24 land contracts).**
- 25 (c) Any representations on or within a product or its packaging or
26 in advertising or promotional materials which would constitute a
27 deceptive act shall be the deceptive act both of the supplier who places
28 such representation thereon or therein, or who authored such materials,
29 and such other suppliers who shall state orally or in writing that such
30 representation is true if such other supplier shall know or have reason
31 to know that such representation was false.
- 32 (d) If a supplier shows by a preponderance of the evidence that an
33 act resulted from a bona fide error notwithstanding the maintenance of
34 procedures reasonably adopted to avoid the error, such act shall not be
35 deceptive within the meaning of this chapter.
- 36 (e) It shall be a defense to any action brought under this chapter that
37 the representation constituting an alleged deceptive act was one made
38 in good faith by the supplier without knowledge of its falsity and in
39 reliance upon the oral or written representations of the manufacturer,
40 the person from whom the supplier acquired the product, any testing
41 organization, or any other person provided that the source thereof is
42 disclosed to the consumer.



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

6 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
 7 company or other provider of a telephone directory or directory
 8 assistance service or its officer or agent is immune from liability for
 9 publishing the listing of an alternate business name or assumed
 10 business name of a supplier in its directory or directory assistance data
 11 base unless the telephone company or other provider of a telephone
 12 directory or directory assistance service is the same person as the
 13 supplier who has committed the deceptive act.

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

18 SECTION 2. IC 32-29.5 IS ADDED TO THE INDIANA CODE AS
 19 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 20 2020]:

21 **ARTICLE 29.5. PRINCIPAL DWELLING LAND**
 22 **CONTRACTS**

23 **Chapter 1. Application**

24 **Sec. 1. This article applies only to a principal dwelling land**
 25 **contract entered into after June 30, 2020.**

26 **Sec. 2. (a) This article applies to a seller who, in the ordinary**
 27 **course of the seller's business, sells real property under a principal**
 28 **dwelling land contract.**

29 **(b) For purposes of subsection (a), a seller is considered to sell**
 30 **real property under a principal dwelling land contract in the**
 31 **ordinary course of the seller's business if the seller, including one**
 32 **(1) or more affiliates of the seller, and whether separately or in**
 33 **total, has at least four (4) outstanding land contracts existing at the**
 34 **same time.**

35 **Sec. 3. This article does not apply to the following:**

36 **(1) A depository institution regulated by a state or federal**
 37 **agency, and subsidiaries owned and controlled by the**
 38 **depository institution.**

39 **(2) A first lien mortgage lender licensed under IC 24-4.4, and**
 40 **subsidiaries owned and controlled by the first lien mortgage**
 41 **lender.**

42 **(3) Transactions between family members.**



1 **Chapter 2. Definitions**

2 **Sec. 1. The definitions set forth in this chapter apply throughout**
 3 **this article.**

4 **Sec. 2. "Affiliate" means any person who directly or indirectly**
 5 **controls, is controlled by, or is under common control of another**
 6 **person.**

7 **Sec. 3. "Land contract" means a contract for the sale of real**
 8 **estate in which the seller of the real estate retains legal title to the**
 9 **real estate until the total contract price is paid by the buyer.**

10 **Sec. 4. (a) "Principal dwelling land contract" means a land**
 11 **contract for the sale of real property:**

12 **(1) designed primarily for the occupancy of one (1) to two (2)**
 13 **families; and**

14 **(2) that is or will be occupied by a buyer as the buyer's**
 15 **principal dwelling.**

16 **(b) The term does not include a land contract for the sale of:**

17 **(1) more than ten (10) acres of land; or**

18 **(2) vacant land.**

19 **Chapter 3. Principal Dwelling Land Contracts and Disclosures**

20 **Sec. 1. (a) At least ten (10) days before a principal dwelling land**
 21 **contract is executed by the parties, the seller shall provide the**
 22 **buyer with the following:**

23 **(1) A complete record of any liens encumbering the property,**
 24 **including any property tax liens or special assessment liens.**

25 **(2) A disclosure of any known defects that are reasonably**
 26 **likely to:**

27 **(A) materially affect the value of the property; or**

28 **(B) require remediation during the period of the principal**
 29 **dwelling contract.**

30 **(3) If the real property was constructed before 1978, the**
 31 **lead-based paint disclosure form as required by the federal**
 32 **EPA and HUD Real Estate Notification and Disclosure Rule.**

33 **(4) The annual percentage rate of the principal dwelling land**
 34 **contract:**

35 **(A) determined under; and**

36 **(B) disclosed in accordance with;**

37 **the federal Truth in Lending Act (Regulation Z; 12 CFR**
 38 **1026.22).**

39 **(5) A title search (as defined in IC 27-7-3-2) and the following**
 40 **statement:**

41 **"A title insurance policy protects your property rights in the**
 42 **property you are purchasing under this land contract. A title**



1 insurance policy may be obtained by contacting a title
 2 insurance producer who can provide you with a title
 3 commitment that includes instructions on how to obtain a title
 4 insurance policy. The title producer must be contacted prior
 5 to the signing of the land contract."

6 (b) The principal dwelling contract shall indicate the date by
 7 which the items enumerated in this section were provided to the
 8 buyer.

9 **Sec. 2. A principal dwelling land contract must include the**
 10 **following information:**

11 (1) The annual percentage rate of the loan, calculated in
 12 accordance with section 1(a)(4) of this chapter.

13 (2) If the real property is encumbered by one (1) or more
 14 liens, a statement of the amount of the liens and an agreement
 15 by the seller that the seller shall use a specified portion of
 16 funds received from the buyer under the contract to satisfy
 17 the liens.

18 (3) The sales price, address, and legal description of the
 19 residential real estate that is the subject of the contract.

20 (4) The term of the contract expressed in years and months,
 21 and the total number of periodic payments due under the
 22 contract.

23 (5) The amount of any balloon payment, and when the balloon
 24 payment is due.

25 (6) A statement setting forth any repairs the buyer is
 26 financially responsible for making to the residential real
 27 estate that is subject to the contract.

28 **Sec. 3. The buyer or seller is not bound by a principal dwelling**
 29 **land contract during the three (3) business days immediately**
 30 **following the date of execution of the contract in the contract's full**
 31 **and final form. At any time during the three (3) day period**
 32 **described in this section, the buyer or the seller may deliver to the**
 33 **other party a written notice of cancellation that has the legal effect**
 34 **of canceling the transaction. If a notice of cancellation is delivered**
 35 **by either the buyer or the seller to the other party during the three**
 36 **(3) day period described in this section, the following apply:**

37 (1) The buyer shall, not later than twenty-four (24) hours
 38 after receipt or delivery of the notice of cancellation:

39 (A) surrender possession of the real estate that is the
 40 subject of the transaction back to the seller in a
 41 substantially similar condition as the buyer received it; and

42 (B) return any keys or other devices that may be used to



1 access the property to the seller or the seller's agent.
 2 **(2) The seller shall, not later than two (2) business days after**
 3 **being placed back into possession of the real estate, return all**
 4 **money paid by the buyer, including any down payments, fees,**
 5 **or regular payments made in connection with the transaction.**
 6 **Neither the buyer nor the seller may waive the three (3) day**
 7 **cancellation period provided for by this section, by contract or**
 8 **otherwise.**

9 **Sec. 4. The seller shall record the executed principal dwelling**
 10 **land contract or memorandum of land contract not later than**
 11 **thirty (30) days after the contract or memorandum is executed and**
 12 **notarized. The buyer may record the executed and notarized**
 13 **contract or memorandum of land contract at any time. The**
 14 **recording shall be done in the county where the real property is**
 15 **located.**

16 SECTION 3. IC 32-31-1-6 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. If a tenant refuses or
 18 neglects to pay rent **or fees** when due, a landlord may terminate the
 19 lease ~~with~~ **after giving** not less than ten (10) days notice to the tenant.
 20 ~~unless:~~

- 21 ~~(1) the parties otherwise agreed; or~~
- 22 ~~(2) However, this section does not apply if the tenant pays the~~
 23 ~~rent or fees in full before the notice period expires.~~

24 SECTION 4. IC 32-31-1-7 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 7. The following form
 26 of notice may be used when a tenant fails or refuses to pay rent **or fees:**
 27 (insert date here)

28 To (insert name of tenant here):
 29 You are notified to vacate the following property not more than ten
 30 (10) days after you receive this notice unless you pay the rent **or fees**
 31 due on the property within ten (10) days: (insert description of property
 32 here).

33 (insert name of landlord here)

34 SECTION 5. IC 32-31-1-8 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. Notice is not
 36 required to terminate a **written or an oral** lease in the following
 37 situations:

- 38 ~~(1) The landlord agrees to rent the premises to the tenant for a~~
 39 ~~specified period of time.~~
- 40 ~~(2) The time for the determination of the tenancy is specified in~~
 41 ~~the contract.~~
- 42 ~~(3) (1) A tenant at will commits waste.~~



1 ~~(4)~~ **(2)** The tenant is a tenant at sufferance.
2 ~~(5)~~ **(3)** The express terms of the contract require the tenant to pay
3 the rent in advance, and the tenant refuses or neglects to pay the
4 rent in advance.
5 ~~(6)~~ **(4)** The landlord-tenant relationship does not exist.
6 SECTION 6. IC 32-31-5-4 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. Unless otherwise
8 provided by a written rental agreement between a landlord and tenant,
9 a landlord shall give the tenant at least ~~thirty (30)~~ **sixty (60)** days
10 written notice before:
11 **(1) modifying the rental agreement in any way; or**
12 **(2) increasing the rent.**

