

HOUSE BILL No. 1260

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.

Synopsis: Gift certificates and store gift cards. Provides that, after June 30, 2021, a person shall not sell or issue to an Indiana consumer any gift certificate or store gift card with an expiration date unless certain conditions are met. Provides that, with respect to a gift certificate or a store gift card that is sold or issued to an Indiana consumer after June 30, 2021, if at any time after the gift certificate or store gift card is issued or sold: (1) the merchant for which the gift certificate or store gift card was originally sold or issued: (A) for any reason ceases to do business in Indiana; or (B) for any reason: (i) substantially changes; or (ii) ceases to offer; the types of goods or services that were offered to consumers at the time the gift certificate or store gift card was originally sold or issued; and (2) any expiration date: (A) authorized under the bill's provisions; and (B) applicable to the gift certificate or store gift card (or to the underlying funds associated with either) has not elapsed; the merchant for which the gift certificate or store gift card was originally sold or issued shall, upon the request of an Indiana consumer who is the rightful holder of the gift certificate or store gift card, promptly refund to the holder the balance of the underlying funds or provide the holder with the remaining balance in some other manner. Provides that a person that violates the bill's provisions: (1) commits a deceptive act that is actionable by an aggrieved consumer and the attorney general under the deceptive consumer sales act; and (2) is subject to the penalties and remedies set forth in the deceptive consumer sales act. Authorizes the attorney general to adopt rules to implement these provisions.

Effective: July 1, 2021.

Cook, Miller D, McNamara

January 14, 2021, read first time and referred to Committee on Commerce, Small Business and Economic Development.



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. 1260

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

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.156-2020,
2 SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 3. (a) A supplier may not commit an unfair,
4 abusive, or deceptive act, omission, or practice in connection with a
5 consumer transaction. Such an act, omission, or practice by a supplier
6 is a violation of this chapter whether it occurs before, during, or after
7 the transaction. An act, omission, or practice prohibited by this section
8 includes both implicit and explicit misrepresentations.

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

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

17 (2) That such subject of a consumer transaction is of a particular



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



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



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



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



1 shall give the customer a written estimate itemizing as closely as
 2 possible the price for labor and parts necessary for the specific job
 3 before commencing the work.

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

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

16 SECTION 2. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS
 17 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2021]:

19 **Chapter 27. Gift Certificates and Store Gift Cards**

20 **Sec. 1. Subject to section 4 of this chapter, as used in this**
 21 **chapter, "gift certificate" means a certificate, a card, a code, or**
 22 **another device that:**

23 **(1) is issued to a consumer:**

24 **(A) on a prepaid basis in exchange for payment;**

25 **(B) primarily for personal, family, or household purposes;**
 26 **and**

27 **(C) in a specified amount that may not be increased or**
 28 **reloaded; and**

29 **(2) is redeemable upon presentation at a single merchant or**
 30 **at an affiliated group of merchants for goods or services.**

31 **Sec. 2. As used in this chapter, "Indiana consumer" means an**
 32 **individual whose principal residence is in Indiana.**

33 **Sec. 3. Subject to section 4 of this chapter, as used in this**
 34 **chapter, "store gift card" means a certificate, a card, a code, or**
 35 **another device that:**

36 **(1) is issued to a consumer:**

37 **(A) on a prepaid basis in exchange for payment;**

38 **(B) primarily for personal, family, or household purposes;**
 39 **and**

40 **(C) in a specified amount, regardless of whether that**
 41 **amount may be increased or reloaded; and**

42 **(2) is redeemable upon presentation at a single merchant or**



1 at an affiliated group of merchants for goods or services.

2 **Sec. 4. For purposes of this chapter, the terms "gift certificate"**
 3 **and "store gift card" do not include any certificate, card, code, or**
 4 **other device that is:**

5 (1) useable solely for communications service (as defined in
 6 IC 8-1-32.5-3);

7 (2) reloadable and not marketed or labeled as a gift card or
 8 gift certificate;

9 (3) a loyalty, award, or promotional gift card (as defined in 12
 10 CFR 1005.20);

11 (4) not marketed to the general public; or

12 (5) redeemable solely:

13 (A) for admission to events or venues at a particular
 14 location or group of affiliated locations; or

15 (B) to obtain goods or services in conjunction with
 16 admission to the events or venues, either at the event or
 17 venue or at specific locations affiliated with and in
 18 geographic proximity to the event or venue.

19 **Sec. 5. After June 30, 2021, a person shall not sell or issue to an**
 20 **Indiana consumer any gift certificate with an expiration date, or**
 21 **any store gift card with an expiration date, unless the following**
 22 **conditions are satisfied:**

23 (1) The person has established policies and procedures to
 24 provide consumers with a reasonable opportunity to purchase
 25 a gift certificate or a store gift card with at least five (5) years
 26 remaining until the expiration date of the gift certificate or
 27 store gift card.

28 (2) The expiration date for the underlying funds is at least the
 29 later of:

30 (A) five (5) years after:

31 (i) the date the gift certificate was initially issued; or

32 (ii) the date on which funds were last loaded to the store
 33 gift card; or

34 (B) the expiration date, if any, of the gift certificate or store
 35 gift card.

36 (3) The following disclosures are provided on the gift
 37 certificate or store gift card, as applicable:

38 (A) The expiration date for the underlying funds or, if the
 39 underlying funds do not expire, a statement of that fact.

40 (B) A toll-free telephone number and, if maintained, an
 41 Internet web site address that a consumer may use to
 42 obtain:



- 1 (i) a replacement gift certificate; or
 2 (ii) a replacement store gift card;
 3 after the gift certificate or store gift card expires, if the
 4 underlying funds may be available to the consumer.
 5 (C) Except in the case of a gift certificate or, if
 6 nonreloadable, a store gift card that bears an expiration
 7 date that is at least seven (7) years from the date of
 8 issuance, a statement:
 9 (i) that the gift certificate or store gift card expires, but
 10 that the underlying funds either do not expire or expire
 11 later than the gift certificate or store gift card; and
 12 (ii) the consumer may contact the issuer for a
 13 replacement gift certificate or store gift card.
 14 The statement required by this clause must be disclosed
 15 with equal prominence and in close proximity to the
 16 expiration date of the gift certificate or store gift card.
 17 For purposes of this subdivision, a disclosure made in an
 18 accompanying terms and conditions document, on packaging
 19 surrounding a gift certificate or store gift card, or on a sticker
 20 or other label affixed to the gift certificate or store gift card
 21 do not constitute disclosure on the gift certificate or store gift
 22 card. For an electronic gift certificate or store gift card,
 23 disclosures must be provided electronically on the gift
 24 certificate or store gift card provided to the consumer. An
 25 issuer that provides a code or confirmation to a consumer
 26 orally must provide to the consumer a written or an electronic
 27 copy of the code or confirmation promptly, and the applicable
 28 disclosures required by this subdivision must be provided on
 29 the written or electronic copy of the code or confirmation.
 30 (4) A fee or charge is not imposed on the consumer for:
 31 (A) replacing the gift certificate or store gift card; or
 32 (B) providing the consumer with the remaining balance in
 33 some other manner before the expiration date of the
 34 underlying funds;
 35 unless the gift certificate or store gift card has been lost or
 36 stolen.
 37 **Sec. 6. (a) This section applies to a gift certificate or a store gift**
 38 **card that is sold or issued to an Indiana consumer after June 30,**
 39 **2021.**
 40 (b) As used in this section, "merchant" refers to:
 41 (1) the merchant;
 42 (2) the group of affiliated merchants; or



1 (3) the successors or assigns of the merchant or the group of
2 affiliated merchants;
3 as applicable, for which a gift certificate or a store gift card was
4 originally sold or issued to an Indiana consumer.

5 (c) If at any time after a gift certificate or a store gift card is
6 issued or sold to an Indiana consumer:

7 (1) the merchant for which the gift certificate or store gift
8 card was originally sold or issued:

9 (A) for any reason ceases to do business in Indiana; or

10 (B) for any reason:

11 (i) substantially changes; or

12 (ii) ceases to offer;

13 the types of goods or services that were offered to
14 consumers at the time the gift certificate or store gift card
15 was originally sold or issued; and

16 (2) any expiration date:

17 (A) authorized under section 5 of this chapter; and

18 (B) applicable to the gift certificate or store gift card, or to
19 the underlying funds associated with the gift certificate or
20 store gift card;

21 has not elapsed;

22 the merchant for which the gift certificate or store gift card was
23 originally sold or issued shall, upon the request of an Indiana
24 consumer who is the rightful holder of the gift certificate or store
25 gift card, promptly (but in no case later than the expiration date,
26 if any, of the underlying funds) refund to the holder the balance of
27 the underlying funds or provide the holder with the remaining
28 balance in some other manner, as disclosed at the time of sale or
29 issuance to the Indiana consumer to whom the gift certificate or
30 store gift card was originally sold or issued.

31 Sec. 7. (a) A person that violates section 5 or 6 of this chapter:

32 (1) commits a deceptive act that is actionable by an aggrieved
33 Indiana consumer and the attorney general under
34 IC 24-5-0.5-4; and

35 (2) is subject to the penalties and remedies set forth in
36 IC 24-5-0.5.

37 An action by the attorney general for violations of this chapter may
38 be brought in the circuit or superior court of Marion County.

39 (b) The remedies and penalties set forth in this section are
40 cumulative and are supplemental to any other remedies and
41 penalties available under any other state or federal law, rule, or
42 regulation for a violation of section 5 or 6 of this chapter.



1 **Sec. 8. This chapter does not void or affect the terms and**
2 **conditions of:**
3 **(1) a gift certificate; or**
4 **(2) a store gift card;**
5 **that is sold or issued to an Indiana consumer before July 1, 2021.**
6 **Sec. 9. The attorney general may adopt rules under IC 4-22-2 to**
7 **implement this chapter, including emergency rules in the manner**
8 **provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an**
9 **emergency rule adopted by the attorney general under this**
10 **subsection and in the manner provided by IC 4-22-2-37.1 expires**
11 **on the date on which a rule that supersedes the emergency rule is**
12 **adopted by the attorney general under IC 4-22-2-24 through**
13 **IC 4-22-2-36.**

