



February 11, 2021

HOUSE BILL No. 1260

DIGEST OF HB 1260 (Updated February 9, 2021 6:11 pm - DI 134)

Citations Affected: IC 24-5.

Synopsis: Gift certificates and store gift cards. Provides that 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 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: January 1, 2023.

Cook, Miller D, McNamara

January 14, 2021, read first time and referred to Committee on Commerce, Small Business and Economic Development.
February 11, 2021, amended, reported — Do Pass.

HB 1260—LS 6103/DI 101



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. 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 JANUARY 1, 2023]: 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

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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



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;



- 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



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 24-5-27-5 or IC 24-5-27-6 (concerning gift certificates and store gift cards), as set forth in IC 24-5-27-7.

(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.

SECTION 2. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023]:

Chapter 27. Gift Certificates and Store Gift Cards

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

(1) is issued to a consumer:

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

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

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

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

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

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

(1) is issued to a consumer:

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

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

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

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



at an affiliated group of merchants for goods or services.

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

- (1) useable solely for communications service (as defined in IC 8-1-32.5-3);
- (2) reloadable and not marketed or labeled as a gift card or gift certificate;
- (3) a loyalty, award, or promotional gift card (as defined in 12 CFR 1005.20);
- (4) not marketed to the general public; or
- (5) redeemable solely:
 - (A) for admission to events or venues at a particular location or group of affiliated locations; or
 - (B) to obtain goods or services in conjunction with admission to the events or venues, either at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

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

- (1) The person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a gift certificate or a store gift card with at least five (5) years remaining until the expiration date of the gift certificate or store gift card.
- (2) The expiration date for the underlying funds is at least the later of:
 - (A) five (5) years after:
 - (i) the date the gift certificate was initially issued; or
 - (ii) the date on which funds were last loaded to the store gift card; or
 - (B) the expiration date, if any, of the gift certificate or store gift card.
- (3) The following disclosures are provided on the gift certificate or store gift card, as applicable:
 - (A) The expiration date for the underlying funds or, if the underlying funds do not expire, a statement of that fact.
 - (B) A toll-free telephone number and, if maintained, an Internet web site address that a consumer may use to obtain:



(i) a replacement gift certificate; or

(ii) a replacement store gift card;

after the gift certificate or store gift card expires, if the underlying funds may be available to the consumer.

(C) Except in the case of a gift certificate or, if nonreloadable, a store gift card that bears an expiration date that is at least seven (7) years from the date of issuance, a statement:

(i) that the gift certificate or store gift card expires, but that the underlying funds either do not expire or expire later than the gift certificate or store gift card; and

(ii) the consumer may contact the issuer for a replacement gift certificate or store gift card.

The statement required by this clause must be disclosed with equal prominence and in close proximity to the expiration date of the gift certificate or store gift card.

For purposes of this subdivision, a disclosure made in an accompanying terms and conditions document, on packaging surrounding a gift certificate or store gift card, or on a sticker or other label affixed to the gift certificate or store gift card do not constitute disclosure on the gift certificate or store gift card. For an electronic gift certificate or store gift card, disclosures must be provided electronically on the gift certificate or store gift card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or an electronic copy of the code or confirmation promptly, and the applicable disclosures required by this subdivision must be provided on the written or electronic copy of the code or confirmation.

(4) A fee or charge is not imposed on the consumer for:

(A) replacing the gift certificate or store gift card; or

(B) providing the consumer with the remaining balance in some other manner before the expiration date of the underlying funds;

unless the gift certificate or store gift card has been lost or stolen.

Sec. 6. (a) This section applies to a gift certificate or a store gift card that is sold or issued to an Indiana consumer after June 30, 2021.

(b) As used in this section, "merchant" refers to:

(1) the merchant;

(2) the group of affiliated merchants; or



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

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

(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 section 5 of this chapter; and

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

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 (but in no case later than the expiration date, if any, of the underlying funds) refund to the holder the balance of the underlying funds or provide the holder with the remaining balance in some other manner, as disclosed at the time of sale or issuance to the Indiana consumer to whom the gift certificate or store gift card was originally sold or issued.

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

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

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

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

(b) The remedies and penalties set forth in this section are cumulative and are supplemental to any other remedies and penalties available under any other state or federal law, rule, or 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.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred House Bill 1260, 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:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE JANUARY 1, 2023]".

Page 6, line 34, after "certificate," insert "**a membership**," and when so amended that said bill do pass.

(Reference is to HB 1260 as introduced.)

MORRIS

Committee Vote: yeas 13, nays 0.

