

HOUSE BILL No. 1377

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-0.5-3; IC 27-4-1-4; IC 27-7-14.

Synopsis: Regulation of home warranties. Defines a home warranty as a contract under which the home warranty provider undertakes to indemnify the warranty holder against the cost of repairing or replacing a home appliance if repair or replacement is needed. Prohibits a person from acting as a home warranty provider unless the person has obtained a license from the department of insurance (department) and deposited a surety bond, securities, or a sum of cash with the department. Prohibits the use of a home warranty form unless it has been submitted for review by the department. Requires that a person, upon purchasing a home warranty, immediately be given a copy of the home warranty, and entitles the person to rescind the home warranty and receive a full refund within three business days after acknowledging receipt of a copy of the home warranty in writing. Provides that a home warranty provider's obligation in connection with the repair or replacement of a home appliance cannot be limited to a specified dollar amount irrespective of the actual cost of repairing or replacing the home appliance. Provides that, if a home warranty contains an arbitration clause, the warranty holder cannot be required to pay the cost of repairing or replacing a home appliance before the arbitration proceeding, and the arbitration must be held in the county in which the warranty holder resides. Makes a violation of the law an unfair and deceptive act or practice in the business of insurance and a deceptive act that is actionable by the attorney general.

Effective: July 1, 2014.

Dermody

January 15, 2014, read first time and referred to Committee on Insurance.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1377



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

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.273-2013,
2 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 3. (a) The following acts, and the following
4 representations as to the subject matter of a consumer transaction,
5 made orally, in writing, or by electronic communication, by a supplier,
6 are deceptive acts:
7 (1) That such subject of a consumer transaction has sponsorship,
8 approval, performance, characteristics, accessories, uses, or
9 benefits it does not have which the supplier knows or should
10 reasonably know it does not have.
11 (2) That such subject of a consumer transaction is of a particular
12 standard, quality, grade, style, or model, if it is not and if the
13 supplier knows or should reasonably know that it is not.
14 (3) That such subject of a consumer transaction is new or unused,
15 if it is not and if the supplier knows or should reasonably know
16 that it is not.



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



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



- 1 (17) The violation by a supplier of IC 24-3-4 concerning
2 cigarettes for import or export.
- 3 (18) The act of a supplier in knowingly selling or reselling a
4 product to a consumer if the product has been recalled, whether
5 by the order of a court or a regulatory body, or voluntarily by the
6 manufacturer, distributor, or retailer, unless the product has been
7 repaired or modified to correct the defect that was the subject of
8 the recall.
- 9 (19) The violation by a supplier of 47 U.S.C. 227, including any
10 rules or regulations issued under 47 U.S.C. 227.
- 11 (20) The violation by a supplier of the federal Fair Debt
12 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
13 rules or regulations issued under the federal Fair Debt Collection
14 Practices Act (15 U.S.C. 1692 et seq.).
- 15 (21) A violation of IC 24-5-7 (concerning health spa services), as
16 set forth in IC 24-5-7-17.
- 17 (22) A violation of IC 24-5-8 (concerning business opportunity
18 transactions), as set forth in IC 24-5-8-20.
- 19 (23) A violation of IC 24-5-10 (concerning home consumer
20 transactions), as set forth in IC 24-5-10-18.
- 21 (24) A violation of IC 24-5-11 (concerning home improvement
22 contracts), as set forth in IC 24-5-11-14.
- 23 (25) A violation of IC 24-5-12 (concerning telephone
24 solicitations), as set forth in IC 24-5-12-23.
- 25 (26) A violation of IC 24-5-13.5 (concerning buyback motor
26 vehicles), as set forth in IC 24-5-13.5-14.
- 27 (27) A violation of IC 24-5-14 (concerning automatic
28 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 29 (28) A violation of IC 24-5-15 (concerning credit services
30 organizations), as set forth in IC 24-5-15-11.
- 31 (29) A violation of IC 24-5-16 (concerning unlawful motor
32 vehicle subleasing), as set forth in IC 24-5-16-18.
- 33 (30) A violation of IC 24-5-17 (concerning environmental
34 marketing claims), as set forth in IC 24-5-17-14.
- 35 (31) A violation of IC 24-5-19 (concerning deceptive commercial
36 solicitation), as set forth in IC 24-5-19-11.
- 37 (32) A violation of IC 24-5-21 (concerning prescription drug
38 discount cards), as set forth in IC 24-5-21-7.
- 39 (33) A violation of IC 24-5-23.5-7 (concerning real estate
40 appraisals), as set forth in IC 24-5-23.5-9.
- 41 (34) A violation of IC 24-5-26 (concerning identity theft), as set
42 forth in IC 24-5-26-3.



- 1 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
 2 as set forth in IC 24-5.5-6-1.
- 3 (36) A violation of IC 24-8 (concerning promotional gifts and
 4 contests), as set forth in IC 24-8-6-3.
- 5 (37) A violation of IC 21-18.5-6 (concerning representations
 6 made by a postsecondary credit bearing proprietary educational
 7 institution), as set forth in IC 21-18.5-6-22.5.
- 8 **(38) A violation of IC 27-7-14 (concerning home warranties)**
 9 **or of rules adopted under IC 27-7-14, as set forth in**
 10 **IC 27-7-14-18.**
- 11 (b) Any representations on or within a product or its packaging or
 12 in advertising or promotional materials which would constitute a
 13 deceptive act shall be the deceptive act both of the supplier who places
 14 such representation thereon or therein, or who authored such materials,
 15 and such other suppliers who shall state orally or in writing that such
 16 representation is true if such other supplier shall know or have reason
 17 to know that such representation was false.
- 18 (c) If a supplier shows by a preponderance of the evidence that an
 19 act resulted from a bona fide error notwithstanding the maintenance of
 20 procedures reasonably adopted to avoid the error, such act shall not be
 21 deceptive within the meaning of this chapter.
- 22 (d) It shall be a defense to any action brought under this chapter that
 23 the representation constituting an alleged deceptive act was one made
 24 in good faith by the supplier without knowledge of its falsity and in
 25 reliance upon the oral or written representations of the manufacturer,
 26 the person from whom the supplier acquired the product, any testing
 27 organization, or any other person provided that the source thereof is
 28 disclosed to the consumer.
- 29 (e) For purposes of subsection (a)(12), a supplier that provides
 30 estimates before performing repair or replacement work for a customer
 31 shall give the customer a written estimate itemizing as closely as
 32 possible the price for labor and parts necessary for the specific job
 33 before commencing the work.
- 34 (f) For purposes of subsection (a)(15) and (a)(16), a telephone
 35 company or other provider of a telephone directory or directory
 36 assistance service or its officer or agent is immune from liability for
 37 publishing the listing of a fictitious business name or assumed business
 38 name of a supplier in its directory or directory assistance database
 39 unless the telephone company or other provider of a telephone
 40 directory or directory assistance service is the same person as the
 41 supplier who has committed the deceptive act.
- 42 (g) For purposes of subsection (a)(18), it is an affirmative defense



1 to any action brought under this chapter that the product has been
 2 altered by a person other than the defendant to render the product
 3 completely incapable of serving its original purpose.

4 SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.278-2013,
 5 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2014]: Sec. 4. (a) The following are hereby defined as unfair
 7 methods of competition and unfair and deceptive acts and practices in
 8 the business of insurance:

9 (1) Making, issuing, circulating, or causing to be made, issued, or
 10 circulated, any estimate, illustration, circular, or statement:

11 (A) misrepresenting the terms of any policy issued or to be
 12 issued or the benefits or advantages promised thereby or the
 13 dividends or share of the surplus to be received thereon;

14 (B) making any false or misleading statement as to the
 15 dividends or share of surplus previously paid on similar
 16 policies;

17 (C) making any misleading representation or any
 18 misrepresentation as to the financial condition of any insurer,
 19 or as to the legal reserve system upon which any life insurer
 20 operates;

21 (D) using any name or title of any policy or class of policies
 22 misrepresenting the true nature thereof; or

23 (E) making any misrepresentation to any policyholder insured
 24 in any company for the purpose of inducing or tending to
 25 induce such policyholder to lapse, forfeit, or surrender the
 26 policyholder's insurance.

27 (2) Making, publishing, disseminating, circulating, or placing
 28 before the public, or causing, directly or indirectly, to be made,
 29 published, disseminated, circulated, or placed before the public,
 30 in a newspaper, magazine, or other publication, or in the form of
 31 a notice, circular, pamphlet, letter, or poster, or over any radio or
 32 television station, or in any other way, an advertisement,
 33 announcement, or statement containing any assertion,
 34 representation, or statement with respect to any person in the
 35 conduct of the person's insurance business, which is untrue,
 36 deceptive, or misleading.

37 (3) Making, publishing, disseminating, or circulating, directly or
 38 indirectly, or aiding, abetting, or encouraging the making,
 39 publishing, disseminating, or circulating of any oral or written
 40 statement or any pamphlet, circular, article, or literature which is
 41 false, or maliciously critical of or derogatory to the financial
 42 condition of an insurer, and which is calculated to injure any



- 1 person engaged in the business of insurance.
- 2 (4) Entering into any agreement to commit, or individually or by
3 a concerted action committing any act of boycott, coercion, or
4 intimidation resulting or tending to result in unreasonable
5 restraint of, or a monopoly in, the business of insurance.
- 6 (5) Filing with any supervisory or other public official, or making,
7 publishing, disseminating, circulating, or delivering to any person,
8 or placing before the public, or causing directly or indirectly, to
9 be made, published, disseminated, circulated, delivered to any
10 person, or placed before the public, any false statement of
11 financial condition of an insurer with intent to deceive. Making
12 any false entry in any book, report, or statement of any insurer
13 with intent to deceive any agent or examiner lawfully appointed
14 to examine into its condition or into any of its affairs, or any
15 public official to which such insurer is required by law to report,
16 or which has authority by law to examine into its condition or into
17 any of its affairs, or, with like intent, willfully omitting to make a
18 true entry of any material fact pertaining to the business of such
19 insurer in any book, report, or statement of such insurer.
- 20 (6) Issuing or delivering or permitting agents, officers, or
21 employees to issue or deliver, agency company stock or other
22 capital stock, or benefit certificates or shares in any common law
23 corporation, or securities or any special or advisory board
24 contracts or other contracts of any kind promising returns and
25 profits as an inducement to insurance.
- 26 (7) Making or permitting any of the following:
- 27 (A) Unfair discrimination between individuals of the same
28 class and equal expectation of life in the rates or assessments
29 charged for any contract of life insurance or of life annuity or
30 in the dividends or other benefits payable thereon, or in any
31 other of the terms and conditions of such contract. However,
32 in determining the class, consideration may be given to the
33 nature of the risk, plan of insurance, the actual or expected
34 expense of conducting the business, or any other relevant
35 factor.
- 36 (B) Unfair discrimination between individuals of the same
37 class involving essentially the same hazards in the amount of
38 premium, policy fees, assessments, or rates charged or made
39 for any policy or contract of accident or health insurance or in
40 the benefits payable thereunder, or in any of the terms or
41 conditions of such contract, or in any other manner whatever.
42 However, in determining the class, consideration may be given



1 to the nature of the risk, the plan of insurance, the actual or
 2 expected expense of conducting the business, or any other
 3 relevant factor.

4 (C) Excessive or inadequate charges for premiums, policy
 5 fees, assessments, or rates, or making or permitting any unfair
 6 discrimination between persons of the same class involving
 7 essentially the same hazards, in the amount of premiums,
 8 policy fees, assessments, or rates charged or made for:

9 (i) policies or contracts of reinsurance or joint reinsurance,
 10 or abstract and title insurance;

11 (ii) policies or contracts of insurance against loss or damage
 12 to aircraft, or against liability arising out of the ownership,
 13 maintenance, or use of any aircraft, or of vessels or craft,
 14 their cargoes, marine builders' risks, marine protection and
 15 indemnity, or other risks commonly insured under marine,
 16 as distinguished from inland marine, insurance; or

17 (iii) policies or contracts of any other kind or kinds of
 18 insurance whatsoever.

19 However, nothing contained in clause (C) shall be construed to
 20 apply to any of the kinds of insurance referred to in clauses (A)
 21 and (B) nor to reinsurance in relation to such kinds of insurance.
 22 Nothing in clause (A), (B), or (C) shall be construed as making or
 23 permitting any excessive, inadequate, or unfairly discriminatory
 24 charge or rate or any charge or rate determined by the department
 25 or commissioner to meet the requirements of any other insurance
 26 rate regulatory law of this state.

27 (8) Except as otherwise expressly provided by law, knowingly
 28 permitting or offering to make or making any contract or policy
 29 of insurance of any kind or kinds whatsoever, including but not in
 30 limitation, life annuities, or agreement as to such contract or
 31 policy other than as plainly expressed in such contract or policy
 32 issued thereon, or paying or allowing, or giving or offering to pay,
 33 allow, or give, directly or indirectly, as inducement to such
 34 insurance, or annuity, any rebate of premiums payable on the
 35 contract, or any special favor or advantage in the dividends,
 36 savings, or other benefits thereon, or any valuable consideration
 37 or inducement whatever not specified in the contract or policy; or
 38 giving, or selling, or purchasing or offering to give, sell, or
 39 purchase as inducement to such insurance or annuity or in
 40 connection therewith, any stocks, bonds, or other securities of any
 41 insurance company or other corporation, association, limited
 42 liability company, or partnership, or any dividends, savings, or



1 profits accrued thereon, or anything of value whatsoever not
2 specified in the contract. Nothing in this subdivision and
3 subdivision (7) shall be construed as including within the
4 definition of discrimination or rebates any of the following
5 practices:

6 (A) Paying bonuses to policyholders or otherwise abating their
7 premiums in whole or in part out of surplus accumulated from
8 nonparticipating insurance, so long as any such bonuses or
9 abatement of premiums are fair and equitable to policyholders
10 and for the best interests of the company and its policyholders.

11 (B) In the case of life insurance policies issued on the
12 industrial debit plan, making allowance to policyholders who
13 have continuously for a specified period made premium
14 payments directly to an office of the insurer in an amount
15 which fairly represents the saving in collection expense.

16 (C) Readjustment of the rate of premium for a group insurance
17 policy based on the loss or expense experience thereunder, at
18 the end of the first year or of any subsequent year of insurance
19 thereunder, which may be made retroactive only for such
20 policy year.

21 (D) Paying by an insurer or insurance producer thereof duly
22 licensed as such under the laws of this state of money,
23 commission, or brokerage, or giving or allowing by an insurer
24 or such licensed insurance producer thereof anything of value,
25 for or on account of the solicitation or negotiation of policies
26 or other contracts of any kind or kinds, to a broker, an
27 insurance producer, or a solicitor duly licensed under the laws
28 of this state, but such broker, insurance producer, or solicitor
29 receiving such consideration shall not pay, give, or allow
30 credit for such consideration as received in whole or in part,
31 directly or indirectly, to the insured by way of rebate.

32 (9) Requiring, as a condition precedent to loaning money upon the
33 security of a mortgage upon real property, that the owner of the
34 property to whom the money is to be loaned negotiate any policy
35 of insurance covering such real property through a particular
36 insurance producer or broker or brokers. However, this
37 subdivision shall not prevent the exercise by any lender of the
38 lender's right to approve or disapprove of the insurance company
39 selected by the borrower to underwrite the insurance.

40 (10) Entering into any contract, combination in the form of a trust
41 or otherwise, or conspiracy in restraint of commerce in the
42 business of insurance.



1 (11) Monopolizing or attempting to monopolize or combining or
2 conspiring with any other person or persons to monopolize any
3 part of commerce in the business of insurance. However,
4 participation as a member, director, or officer in the activities of
5 any nonprofit organization of insurance producers or other
6 workers in the insurance business shall not be interpreted, in
7 itself, to constitute a combination in restraint of trade or as
8 combining to create a monopoly as provided in this subdivision
9 and subdivision (10). The enumeration in this chapter of specific
10 unfair methods of competition and unfair or deceptive acts and
11 practices in the business of insurance is not exclusive or
12 restrictive or intended to limit the powers of the commissioner or
13 department or of any court of review under section 8 of this
14 chapter.

15 (12) Requiring as a condition precedent to the sale of real or
16 personal property under any contract of sale, conditional sales
17 contract, or other similar instrument or upon the security of a
18 chattel mortgage, that the buyer of such property negotiate any
19 policy of insurance covering such property through a particular
20 insurance company, insurance producer, or broker or brokers.
21 However, this subdivision shall not prevent the exercise by any
22 seller of such property or the one making a loan thereon of the
23 right to approve or disapprove of the insurance company selected
24 by the buyer to underwrite the insurance.

25 (13) Issuing, offering, or participating in a plan to issue or offer,
26 any policy or certificate of insurance of any kind or character as
27 an inducement to the purchase of any property, real, personal, or
28 mixed, or services of any kind, where a charge to the insured is
29 not made for and on account of such policy or certificate of
30 insurance. However, this subdivision shall not apply to any of the
31 following:

32 (A) Insurance issued to credit unions or members of credit
33 unions in connection with the purchase of shares in such credit
34 unions.

35 (B) Insurance employed as a means of guaranteeing the
36 performance of goods and designed to benefit the purchasers
37 or users of such goods.

38 (C) Title insurance.

39 (D) Insurance written in connection with an indebtedness and
40 intended as a means of repaying such indebtedness in the
41 event of the death or disability of the insured.

42 (E) Insurance provided by or through motorists service clubs



- 1 or associations.
- 2 (F) Insurance that is provided to the purchaser or holder of an
- 3 air transportation ticket and that:
- 4 (i) insures against death or nonfatal injury that occurs during
- 5 the flight to which the ticket relates;
- 6 (ii) insures against personal injury or property damage that
- 7 occurs during travel to or from the airport in a common
- 8 carrier immediately before or after the flight;
- 9 (iii) insures against baggage loss during the flight to which
- 10 the ticket relates; or
- 11 (iv) insures against a flight cancellation to which the ticket
- 12 relates.
- 13 (14) Refusing, because of the for-profit status of a hospital or
- 14 medical facility, to make payments otherwise required to be made
- 15 under a contract or policy of insurance for charges incurred by an
- 16 insured in such a for-profit hospital or other for-profit medical
- 17 facility licensed by the state department of health.
- 18 (15) Refusing to insure an individual, refusing to continue to issue
- 19 insurance to an individual, limiting the amount, extent, or kind of
- 20 coverage available to an individual, or charging an individual a
- 21 different rate for the same coverage, solely because of that
- 22 individual's blindness or partial blindness, except where the
- 23 refusal, limitation, or rate differential is based on sound actuarial
- 24 principles or is related to actual or reasonably anticipated
- 25 experience.
- 26 (16) Committing or performing, with such frequency as to
- 27 indicate a general practice, unfair claim settlement practices (as
- 28 defined in section 4.5 of this chapter).
- 29 (17) Between policy renewal dates, unilaterally canceling an
- 30 individual's coverage under an individual or group health
- 31 insurance policy solely because of the individual's medical or
- 32 physical condition.
- 33 (18) Using a policy form or rider that would permit a cancellation
- 34 of coverage as described in subdivision (17).
- 35 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
- 36 concerning motor vehicle insurance rates.
- 37 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 38 to interest rate guarantees.
- 39 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 40 coverage for victims of abuse.
- 41 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 42 (23) Violating IC 27-1-15.6-3(b) concerning licensure of



- 1 insurance producers.
- 2 (24) Violating IC 27-1-38 concerning depository institutions.
- 3 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
- 4 the resolution of an appealed grievance decision.
- 5 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired
- 6 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,
- 7 2007, and repealed).
- 8 (27) Violating IC 27-2-21 concerning use of credit information.
- 9 (28) Violating IC 27-4-9-3 concerning recommendations to
- 10 consumers.
- 11 (29) Engaging in dishonest or predatory insurance practices in
- 12 marketing or sales of insurance to members of the United States
- 13 Armed Forces as:
- 14 (A) described in the federal Military Personnel Financial
- 15 Services Protection Act, P.L.109-290; or
- 16 (B) defined in rules adopted under subsection (b).
- 17 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated
- 18 life insurance.
- 19 (31) Violating IC 27-2-22 concerning retained asset accounts.
- 20 (32) Violating IC 27-8-5-29 concerning health plans offered
- 21 through a health benefit exchange (as defined in IC 27-19-2-8).
- 22 (33) Violating a requirement of the federal Patient Protection and
- 23 Affordable Care Act (P.L. 111-148), as amended by the federal
- 24 Health Care and Education Reconciliation Act of 2010
- 25 (P.L. 111-152), that is enforceable by the state.
- 26 **(34) Violating IC 27-7-14 or rules adopted under IC 27-7-14**
- 27 **concerning home warranties, as set forth in IC 27-7-14-18.**
- 28 (b) Except with respect to federal insurance programs under
- 29 Subchapter III of Chapter 19 of Title 38 of the United States Code, the
- 30 commissioner may, consistent with the federal Military Personnel
- 31 Financial Services Protection Act (P.L.109-290), adopt rules under
- 32 IC 4-22-2 to:
- 33 (1) define; and
- 34 (2) while the members are on a United States military installation
- 35 or elsewhere in Indiana, protect members of the United States
- 36 Armed Forces from;
- 37 dishonest or predatory insurance practices.
- 38 SECTION 3. IC 27-7-14 IS ADDED TO THE INDIANA CODE AS
- 39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 40 1, 2014]:
- 41 **Chapter 14. Home Warranties**
- 42 **Sec. 1. As used in this chapter, "arbitration clause" means a**



1 provision of a home warranty under which a dispute between a
 2 warranty holder and the home warranty provider is to be settled
 3 through arbitration.

4 Sec. 2. As used in this chapter, "department" refers to the
 5 department of insurance.

6 Sec. 3. As used in this chapter, "home appliance" means an
 7 electrical or mechanical machine that performs or aids in the
 8 performance of a household function, such as cooking, cleaning the
 9 home, keeping food from spoiling, washing or drying clothes,
 10 warming or cooling the home, or cleaning the air of the home. The
 11 term includes, but is not limited to, a home's:

- 12 (1) air conditioning system;
- 13 (2) heating system;
- 14 (3) electrical system;
- 15 (4) plumbing system;
- 16 (5) water heater;
- 17 (6) whirlpool-type bathtub;
- 18 (7) refrigerator;
- 19 (8) oven, range, stove, or cooktop;
- 20 (9) dishwasher;
- 21 (10) built-in microwave;
- 22 (11) garbage disposal;
- 23 (12) clothes washer;
- 24 (13) clothes dryer;
- 25 (14) ductwork;
- 26 (15) garage door opener;
- 27 (16) ceiling and exhaust fans;
- 28 (17) pool or spa;
- 29 (18) water well pump;
- 30 (19) sump pump;
- 31 (20) septic system;
- 32 (21) central vacuum system; and
- 33 (22) stand alone freezer.

34 Sec. 4. (a) As used in this chapter, "home warranty" means a
 35 contract under which a person undertakes to indemnify the
 36 warranty holder against the cost of repairing or replacing, or to
 37 repair or replace, a home appliance if the home appliance needs
 38 repair or replacement.

39 (b) The term does not include a warranty or guarantee:

- 40 (1) that is provided by:
 - 41 (A) the builder of a home; or
 - 42 (B) the manufacturer or seller of an appliance; and



1 (2) for which the builder, manufacturer, or seller does not
2 impose an identifiable charge.

3 **Sec. 5.** As used in this chapter, "home warranty form" means
4 the written contract constituting a home warranty under this
5 chapter.

6 **Sec. 6.** As used in this chapter, "home warranty provider"
7 means a person that:

8 (1) enters into; or

9 (2) proposes to enter into;

10 a home warranty as the person undertaking to indemnify the
11 warranty holder against the cost of repairing or replacing, or to
12 repair or replace, a home appliance.

13 **Sec. 7.** As used in this chapter, "person" includes an individual,
14 a corporation, a partnership, a limited liability company, an
15 unincorporated association, or another legal entity.

16 **Sec. 8. (a)** As used in this chapter, "warranty holder" means a
17 person who enters into a home warranty as the person paying
18 compensation to the home warranty provider for undertaking to:

19 (1) indemnify the warranty holder against the cost of
20 repairing or replacing; or

21 (2) repair or replace;

22 a home appliance.

23 (b) The term includes a person who succeeds to the position of
24 the prior warranty holder under the terms of a home warranty.

25 **Sec. 9.** Before entering into or offering to enter into a home
26 warranty in Indiana, a home warranty provider must:

27 (1) obtain a license from the department under section 10 of
28 this chapter;

29 (2) ensure the faithful performance of its obligations to
30 warranty holders by depositing with the department:

31 (A) a surety bond in the amount of one hundred thousand
32 dollars (\$100,000);

33 (B) marketable securities having a market value of at least
34 one hundred thousand dollars (\$100,000); or

35 (C) cash in the amount of at least one hundred thousand
36 dollars (\$100,000); and

37 (3) submit to the department under section 11 of this chapter
38 the home warranty forms that the home warranty provider
39 will use in doing business as a home warranty provider in
40 Indiana.

41 **Sec. 10. (a)** To obtain a license from the department, a home
42 warranty provider must complete and submit to the department an



1 application on a form provided by the department.

2 (b) The form provided by the department for the purposes of
3 this section must provide for the applicant to enter the following
4 information:

5 (1) The location of the applicant's home office.

6 (2) The name and residence address of:

7 (A) each member of the applicant's board of directors;

8 (B) the principal executive officer of the applicant and
9 other officers of the applicant who have policymaking

10 authority or occupy upper level executive positions; and

11 (C) each shareholder of, partner or member in, or owner
12 of the applicant who owns or controls at least ten percent
13 (10%) of the applicant.

14 (3) Other information determined by the insurance
15 commissioner:

16 (A) to be necessary or useful to the regulation of an
17 applicant as a home warranty provider; or

18 (B) to bear on the worthiness of an applicant to do business
19 in Indiana as a home warranty provider.

20 (c) An application submitted to the department under this
21 section must be accompanied by the following:

22 (1) If the applicant is a corporation:

23 (A) a copy of the applicant's articles of incorporation,
24 certified by the public official having custody of the
25 original articles; and

26 (B) a copy of the applicant's bylaws, certified by the
27 applicant's secretary or similar officer.

28 (2) A copy of the most recent financial statement of the
29 applicant, verified under oath by at least two (2) of the
30 applicant's principal officers.

31 (3) A license fee in the amount of two hundred dollars (\$200).

32 (d) Upon receiving a completed application under this section,
33 the department shall examine the application and make any
34 further investigation of the applicant that the department
35 considers advisable. If the department determines that the
36 applicant is qualified for the license, the department shall issue to
37 the applicant a license as a home warranty provider. If the
38 department determines that the applicant is not qualified for the
39 license, it shall provide to the applicant a written notice:

40 (1) stating that the application is rejected; and

41 (2) setting forth the grounds for the rejection of the
42 application.



1 **Sec. 11. (a) A home warranty provider may not use a home**
 2 **warranty form unless:**

3 **(1) the text of the home warranty form has been submitted to**
 4 **the department for review; and**

5 **(2) a period sufficient to enable the department to review the**
 6 **home warranty form, as specified in the rules adopted under**
 7 **this chapter, has passed.**

8 **(b) The department shall:**

9 **(1) review each home warranty form submitted to the**
 10 **department under this section; and**

11 **(2) reject a home warranty form for use in Indiana if the**
 12 **home warranty form:**

13 **(A) does not conform to the requirements of; or**

14 **(B) violates;**

15 **this chapter or rules adopted under this chapter.**

16 **(c) A home warranty provider may not use a home warranty**
 17 **form that has been rejected under subsection (b)(2).**

18 **Sec. 12. (a) Upon entering into a home warranty with a**
 19 **warranty holder, a home warranty provider shall immediately**
 20 **provide a copy of the home warranty form to the warranty holder.**

21 **(b) The period during which a warranty holder is entitled to**
 22 **rescind the home warranty under the provision included in the**
 23 **home warranty form under section 13(a)(1) of this chapter does not**
 24 **begin until the warranty holder acknowledges in writing that the**
 25 **warranty holder has received a copy of the home warranty under**
 26 **this section.**

27 **Sec. 13. (a) A home warranty form used in Indiana must provide**
 28 **that:**

29 **(1) the warranty holder may exercise the right to rescind the**
 30 **home warranty at any time before the end of the third**
 31 **business day after the day on which the warranty holder:**

32 **(A) receives a copy of the home warrant under section**
 33 **12(a) of this chapter; and**

34 **(B) acknowledges in writing under section 12(b) of this**
 35 **chapter that the warranty holder has received a copy of**
 36 **the home warranty; and**

37 **(2) any reasonable form of communication of the rescission by**
 38 **the warranty holder to the home warranty provider will be**
 39 **effective, including communication by telephone call or**
 40 **electronic mail to the telephone number or electronic mail**
 41 **address provided by the home warranty provider.**

42 **(b) A home warranty form used in Indiana must conspicuously**



1 state the warranty holder's right of rescission as described in
 2 subsection (a). The provision of the home warranty form
 3 concerning the right of rescission must set forth in conspicuous text
 4 the telephone number and electronic mail address that a warranty
 5 holder may use to communicate the warranty holder's rescission
 6 of the home warranty to the home warranty provider. The
 7 provision described in this subsection must be included in the copy
 8 of the home warranty form provided to the warranty holder under
 9 section 12(a) of this chapter.

10 (c) If a warranty holder exercises the right of rescission as
 11 described in subsection (a) within the period allowed by this
 12 section, the home warranty provider shall refund to the warranty
 13 holder one hundred percent (100%) of the money paid by the
 14 warranty holder to the home warranty provider upon entering into
 15 the home warranty.

16 (d) If a home warranty provider, in violation of section 12(a) of
 17 this chapter, does not provide a copy of the home warranty form
 18 to the warranty holder immediately upon entering into the home
 19 warranty with the warranty holder, the warranty holder's right of
 20 rescission as described in subsection (a) does not expire until the
 21 end of the third business day after the day on which the warranty
 22 holder, having received a copy of the home warranty form from
 23 the home warranty provider, acknowledges in writing under
 24 section 12(b) of this chapter that the warranty holder has received
 25 a copy of the home warranty.

26 **Sec. 14. A home warranty form used in Indiana may not provide**
 27 **that a home warranty provider's obligation to the warranty holder**
 28 **in connection with the repair or replacement of a home appliance**
 29 **is limited to a specified dollar amount irrespective of the actual**
 30 **total cost of repairing or replacing the home appliance.**

31 **Sec. 15. If a home warranty form used in Indiana contains an**
 32 **arbitration clause, the following apply:**

33 (1) Neither the home warranty provider nor the terms of the
 34 home warranty may require the warranty holder to pay the
 35 cost of repairing or replacing a home appliance before the
 36 home warranty provider and the warranty holder enter into
 37 arbitration of a dispute concerning the repair or replacement
 38 of the home appliance.

39 (2) The home warranty form:

40 (A) must provide for the arbitration proceeding to take
 41 place under IC 34-57-1 in the county in Indiana in which
 42 the warranty holder resides; and



1 **(B) may not specify that the arbitration proceeding is to be**
 2 **conducted by or through the American Arbitration**
 3 **Association.**

4 **Sec. 16. (a) The surety bond, marketable securities, or cash**
 5 **deposited by a home warranty provider under section 9(2) of this**
 6 **chapter:**

7 **(1) shall be retained by the department throughout the period**
 8 **during which the home warranty provider does business in**
 9 **Indiana as a home warranty provider, subject to use under**
 10 **subdivision (2); and**

11 **(2) may be used by the department to satisfy any obligations**
 12 **of the home warranty provider to a warranty holder in**
 13 **Indiana if the home warranty provider:**

14 **(A) refuses, without legal justification, to satisfy the**
 15 **obligation; or**

16 **(B) becomes insolvent.**

17 **(b) If a home warranty provider:**

18 **(1) ceases to do business in Indiana; and**

19 **(2) furnishes to the department proof satisfactory to the**
 20 **insurance commissioner that the home warranty provider has**
 21 **discharged or otherwise adequately provided for all of its**
 22 **obligations to warranty holders in Indiana;**

23 **the department shall release to the home warranty provider the**
 24 **surety bond, marketable securities, or cash deposited by the home**
 25 **warranty provider under section 9(2) of this chapter.**

26 **Sec. 17. The department shall adopt rules under IC 4-22-2 to**
 27 **administer this chapter.**

28 **Sec. 18. (a) A violation of this chapter or the rules adopted**
 29 **under this chapter by a home warranty provider is:**

30 **(1) an unfair and deceptive act or practice in the business of**
 31 **insurance under IC 27-4-1-4; and**

32 **(2) a deceptive act that is:**

33 **(A) actionable by the attorney general under; and**

34 **(B) subject to the remedies and penalties set forth in;**

35 **IC 24-5-0.5.**

36 **(b) The department and the office of the attorney general have**
 37 **concurrent authority to take action against a home warranty**
 38 **provider under subsection (a).**

