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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 2016 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 283

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AN ACT to amend the Indiana Code concerning trade regulation.

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

SECTION 1. IC 24-5-0.5-2, AS AMENDED BY P.L.65-2014, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.

(C) The collection of or attempt to collect a debt by a debt collector.

(2) "Person" means an individual, corporation, the state of Indiana



or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

~~(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.~~

~~(C) (B) A debt collector.~~

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars (\$4,000); or

(ii) five hundred dollars (\$500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged



by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

- (i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or
- (ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

- (A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or
- (B) assisting another in promoting a pyramid promotional scheme.

(11) (9) "Senior consumer" means an individual who is at least sixty (60) years of age.

(12) (10) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

- (A) paper into an electronic signal and to transmit that signal over a regular telephone line; or
- (B) an electronic signal received over a regular telephone line onto paper.

(13) (11) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

- (A) property;
- (B) goods; or



(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

~~(14)~~ **(12)** "Debt" has the meaning set forth in 15 U.S.C. 1692(a)(5).

~~(15)~~ **(13)** "Debt collector" has the meaning set forth in 15 U.S.C. 1692(a)(6). The term does not include a person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(b) As used in section 3(b)(15) and 3(b)(16) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 2. IC 24-5-0.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. (a) A supplier commits a deceptive act if the supplier gives any of the following representations, orally or in writing, or does any of the following acts:

(1) Either:

(A) solicits to engage in a consumer transaction without a permit or other license required by law;

(B) solicits to engage in a consumer transaction if a permit or other license is required by law to engage in the consumer transaction and the supplier is not qualified to obtain the required permit or other license or does not intend to obtain the permit or other license; or

(C) engages in a consumer transaction without a permit or other license required by law.

(2) Commits a violation of IC 24-5-10.

~~(3) Contrives, prepares, sets up, operates, publicizes by means of~~

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advertisements, or promotes a pyramid promotional scheme:

(b) A supplier commits an unconscionable act that shall be treated the same as a deceptive act under this chapter if the supplier solicits a person to enter into a contract or agreement:

- (1) that contains terms that are oppressively one sided or harsh;
- (2) in which the terms unduly limit the person's remedies; or
- (3) in which the price is unduly excessive;

and there was unequal bargaining power that led the person to enter into the contract or agreement unwillingly or without knowledge of the terms of the contract or agreement. There is a rebuttable presumption that a person has knowledge of the terms of a contract or agreement if the person signs a written contract.

SECTION 3. IC 24-13 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

**ARTICLE 13. PYRAMID PROMOTIONAL SCHEMES**

**Chapter 1. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Appropriate inventory repurchase program" means a program by which an entity repurchases from a salesperson current and marketable inventory in the possession of the salesperson, upon request and upon commercially reasonable terms, when the salesperson's business relationship with the entity ends.**

**Sec. 3. "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months after the date of purchase at not less than ninety percent (90%) of the original net cost, less appropriate set-offs and legal claims, if any.**

**Sec. 4. "Compensation" means a payment of any money, thing of value, or financial benefit conferred in return for inducing another person to participate in a pyramid promotional scheme.**

**Sec. 5. "Consideration" means the payment of cash or the purchase of goods, services, or intangible property. The term does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale, or time and effort spent in pursuit of sales or recruiting activities.**

**Sec. 6. "Inventory" includes both goods and services, including company produced promotional materials, sales aids, and sales kits that an entity requires independent salespersons to purchase.**

**Sec. 7. "Inventory loading" means the requirement or**



encouragement by a plan or operation that its independent salesperson purchase inventory in an amount that exceeds the amount that the salesperson can expect to resell for ultimate consumption or to consume in a reasonable time period, or both.

**Sec. 8. "Promote"** means to contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme.

**Sec. 9. "Pyramid promotional scheme"** means any plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other persons into the plan or operation rather than from the sale and consumption of goods, services, or intangible property by a participant or other persons introduced into the plan or operation. The term includes any plan or operation under which the number of people who may participate is limited either expressly or by the application of conditions affecting the eligibility of a person to receive compensation under the plan or operation, or any plan or operation under which a person, on giving any consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

#### **Chapter 2. Pyramid Promotional Schemes Prohibited**

**Sec. 1.** A person may not establish, promote, or operate any pyramid promotional scheme. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan does not change the identity of the plan as a pyramid promotional scheme.

#### **Chapter 3. Enforcement Powers of the Attorney General**

**Sec. 1. (a)** If the attorney general has reasonable cause to believe that a person has engaged or is about to engage in any act or practice constituting a violation of any provision of this article, or any order issued under this article, the attorney general may do any of the following:

- (1) Issue a cease and desist order, with or without a prior hearing, against any person engaged in the prohibited activities, directing the person to cease and desist from further illegal activities.
- (2) Bring an action in the circuit court of the county in which the violation is believed to have occurred to:
  - (A) enjoin the acts or practices constituting a violation of this article; or
  - (B) enforce compliance with this article or any order issued



under this article.

(3) Impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this article or any order issued under this article.

(b) The maximum amount of a civil penalty that may be imposed upon a person under subsection (a) is ten thousand dollars (\$10,000) for each violation committed by the person. The attorney general may bring an action in the circuit court of the county in which the violation occurred to recover a penalty imposed under this chapter. The attorney general shall transfer all civil penalties collected under this chapter to the treasurer of state for deposit in the state general fund.

Sec. 2. (a) A person named in a cease and desist order issued under this article must be notified of the person's right to file, within fifteen (15) days after the receipt of the order, a written notice for a hearing. If the attorney general does not receive a written request for a hearing within the time specified, the cease and desist order is permanent and the person named in the order is considered to have waived all rights to a hearing. A cease and desist order issued under this article must state:

- (1) the effective date of the order;
- (2) the intent or purpose of the order; and
- (3) the grounds on which the order is based.

(b) A person aggrieved by a final order issued under this article may obtain a review of the order in the circuit court of the county in which the violations of this article are found to have occurred.

Sec. 3. (a) Upon a proper showing to the appropriate circuit court, a permanent injunction, temporary injunction, restraining order, or writ of mandamus may be granted and a receiver or conservator may be appointed for the person alleged to have violated this article or the assets of the person alleged to have violated this article. In addition, upon a proper showing by the attorney general, the circuit court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act violating this article or any order issued under this article.

(b) The circuit court may not require the attorney general to post a bond.

(c) The circuit court may award to the attorney general court costs and attorney's fees in an action brought under this chapter.

Sec. 4. This chapter does not bar the attorney general or a prosecuting attorney from proceeding under any other provision



of law against a pyramid promotional scheme or any person involved with a pyramid promotional scheme.

**Sec. 5. The attorney general shall adopt rules under IC 4-22-2 necessary to administer and implement this chapter.**

**Chapter 4. Private Actions and Proceedings**

**Sec. 1. (a) A person may bring an action against a person who establishes, operates, promotes, or assists another to promote a pyramid promotional scheme for:**

**(1) the damages actually suffered as a result of the pyramid promotional scheme; or**

**(2) one thousand dollars (\$1,000);**

**whichever is greater.**

**(b) The court may increase damages awarded under this section in an amount that does not exceed:**

**(1) three (3) times the actual damages of the person suffering the loss; or**

**(2) three thousand dollars (\$3,000).**

**(c) The court may award reasonable attorney's fees to a party that prevails in an action under this section.**

**(d) Actual damages awarded to a person have priority over any civil penalty imposed under this article.**

**Sec. 2. (a) A person who is entitled to bring an action on the person's own behalf under section 1 of this chapter may bring a class action on behalf of any class of persons of which the person is a member and that has been damaged by the pyramid promotional scheme, subject to and under the Indiana Rules of Trial Procedure governing class actions.**

**(b) The court may award reasonable attorney's fees to the party that prevails in a class action under this section. The attorney's fees must be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment. The court, however, may consider awarding a contingency fee.**

**(c) Any money or other property recovered in a class action under this section that cannot, with due diligence, be restored to the members of the class within one (1) year after the final judgment must be returned to the abandoned property fund established by IC 32-34-1-33.**

**(d) Actual damages awarded to a class have priority over any civil penalty imposed under this article.**

**Chapter 5. Rule of Construction and its Application to Certain Marketing Operations**

**Sec. 1. This article may not be construed to prohibit a plan or**





operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale if both of the following conditions are satisfied:

- (1) The plan or operation does not promote or induce inventory loading.
- (2) The plan or operation implements an appropriate inventory repurchase program.

**Sec. 2.** An entity must clearly describe an appropriate inventory repurchase program in its recruiting literature, sales manual, or contracts with independent salespersons. The recruiting literature, sales manual, or contract must disclose any inventory that is not eligible for repurchase under the program.

**Sec. 3.** An appropriate inventory repurchase program is not required to apply to inventory that:

- (1) is no longer within the inventory's commercially reasonable use or shelf life period; or
- (2) has been used or opened.

**Sec. 4.** An entity must clearly describe to a salesperson, prior to purchase, inventory that is excluded from the entity's appropriate inventory repurchase program as seasonal, discontinued, or special promotion products not subject to the entity's appropriate inventory repurchase program.

**Sec. 5.** Notwithstanding section 1 of this chapter, the burden of showing that a participant or other person derives compensation primarily from the sale and consumption of goods, services, or intangible property lies with the plan or operation or a person involved with the plan or operation.



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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