

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 2016 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 353

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 24-5-0.5-3, AS AMENDED BY P.L.65-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.

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

- (1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.
- (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.
- (3) That such subject of a consumer transaction is new or unused,

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if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a 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 a fictitious business name or an assumed business name (as described in IC 23-15-1) 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 a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and



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

(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 a fictitious business name or assumed business name of a supplier in its directory or directory assistance database 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 24-5-0.5-3, AS AMENDED BY SEA 353-2017, SECTION 1, AND AS AMENDED BY SEA 443-2017, SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018]: Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.

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

- (1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.
- (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.
- (3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.
- (4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.
- (5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.
- (6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.
- (7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.
- (8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.



(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a 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 a ~~fictitious~~ **an alternate** business name or an assumed business name (as described in ~~IC 23-15-1~~) **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 a ~~fictitious~~ **an alternate** business name or assumed business name (as described in ~~IC 23-15-1~~) **IC 23-0.5-3-4**) in a directory assistance ~~database~~ **data base** if:

- (A) the name misrepresents the supplier's geographic location;
- (B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and
- (C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) The violation by a supplier of IC 24-3-4 concerning cigarettes for import or export.

(18) The act of a supplier in knowingly selling or reselling a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer, unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) The violation by a supplier of 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(20) The violation by a supplier of the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), including any rules or regulations issued under the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(21) A violation of IC 24-5-7 (concerning health spa services), as set forth in IC 24-5-7-17.

(22) A violation of IC 24-5-8 (concerning business opportunity



transactions), as set forth in IC 24-5-8-20.

(23) A violation of IC 24-5-10 (concerning home consumer transactions), as set forth in IC 24-5-10-18.

(24) A violation of IC 24-5-11 (concerning real property improvement contracts), as set forth in IC 24-5-11-14.

(25) A violation of IC 24-5-12 (concerning telephone solicitations), as set forth in IC 24-5-12-23.

(26) A violation of IC 24-5-13.5 (concerning buyback motor vehicles), as set forth in IC 24-5-13.5-14.

(27) A violation of IC 24-5-14 (concerning automatic dialing-announcing devices), as set forth in IC 24-5-14-13.

(28) A violation of IC 24-5-15 (concerning credit services organizations), as set forth in IC 24-5-15-11.

(29) A violation of IC 24-5-16 (concerning unlawful motor vehicle subleasing), as set forth in IC 24-5-16-18.

(30) A violation of IC 24-5-17 (concerning environmental marketing claims), as set forth in IC 24-5-17-14.

(31) A violation of IC 24-5-19 (concerning deceptive commercial solicitation), as set forth in IC 24-5-19-11.

(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.

(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 a ~~fictitious~~ **an alternate** business name or assumed business name of a supplier in its directory or directory assistance ~~database~~ **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 3. IC 24-5-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. If the consumer exercises the right to cancel under this chapter, the supplier shall, within ten (10) business days after the notice of cancellation is delivered, return to the consumer any payment or other consideration transferred to the supplier by the consumer. However, if the transaction constitutes a ~~home~~ **real property** improvement contract under IC 24-5-11 and if the ~~home~~ **real property** improvement has been made on an emergency basis within three (3) days after final agreement to the contract, the supplier is entitled to recover from the consumer the fair market value of the material and labor involved to alleviate the emergency.

SECTION 4. IC 24-5-11-1, AS AMENDED BY P.L.82-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. This chapter applies only to residential **real property located in Indiana, including all fixtures to, structures on, and improvements to the real property.**



SECTION 5. IC 24-5-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. As used in this chapter, "consumer" means ~~an individual who~~ **a person that** owns, leases, or rents the residential **real** property that is the subject of a ~~home real property~~ improvement contract.

SECTION 6. IC 24-5-11-2.5, AS ADDED BY P.L.82-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.5. As used in this chapter, "exterior ~~home~~ improvement" means any alteration, repair, replacement, reconstruction, or other modification made to the exterior of residential **real** property, including the exterior of any structure on or fixture or improvement to the property. The term also includes the alteration, repair, replacement, reconstruction, or other modification of a residential roof system.

SECTION 7. IC 24-5-11-2.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.6. As used in this chapter, "insurance policy" refers to a:

- (1) **personal line policy of property and casualty insurance coverage; or**
- (2) **commercial line farm insurance policy that insures residential property.**

SECTION 8. IC 24-5-11-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.7. As used in this chapter, "insured consumer" refers to a person:

- (1) **that is a policyholder or an insured under a:**
 - (A) **personal line policy of property and casualty insurance coverage; or**
 - (B) **commercial line farm insurance policy that insures residential property; and**
- (2) **that is or may become a consumer that enters into a real property improvement contract under this chapter.**

SECTION 9. IC 24-5-11-2.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.8. As used in this chapter, "interior improvement" means any alteration, repair, replacement, reconstruction, or other modification made to the interior of real property, including the interior of any structure on or fixture or improvement to the property. The term also includes the alteration, repair, reconstruction, or other modification of a basement.

SECTION 10. IC 24-5-11-3, AS AMENDED BY P.L.82-2012,



SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) As used in this chapter, "~~home~~ **real property** improvement" means any alteration, repair, replacement, reconstruction, or other modification of residential **real** property.

(b) The term includes **the following**:

(1) An exterior ~~home~~ improvement.

(2) **An interior improvement.**

SECTION 11. IC 24-5-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. As used in this chapter, "~~home~~ **real property** improvement contract" means an agreement, oral or written, between a ~~home~~ **real property** improvement supplier and a consumer to make a ~~home~~ **real property** improvement and for which the **real property improvement** contract price exceeds one hundred fifty dollars (\$150).

SECTION 12. IC 24-5-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. As used in this chapter, "~~home~~ **real property** improvement contract price" means the amount actually charged for the services, materials, and work to be performed under the ~~home~~ **real property** improvement contract but does not include financing costs, loan consolidation amounts, taxes, and governmental fees paid by or on behalf of the consumer, amounts returned to or on behalf of the consumer, or similar costs not related to the ~~home~~ **real property** improvement.

SECTION 13. IC 24-5-11-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. As used in this chapter, "~~home~~ **real property** improvement supplier" means a person who engages in or solicits ~~home~~ **real property** improvement contracts whether or not the person deals directly with the consumer.

SECTION 14. IC 24-5-11-6.2 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 6.2: As used in this chapter, "insured consumer" refers to a person:

(1) who is a policyholder or an insured under a:

(A) personal line policy of property and casualty insurance coverage; or

(B) ~~commercial~~ line farm insurance policy that insures residential property; and

(2) who is or may become a consumer who enters into a home improvement contract under this chapter.

SECTION 15. IC 24-5-11-7.5, AS ADDED BY P.L.82-2012, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7.5. (a) As used in this chapter, "**real property**" or "residential **real** property" means real property that:



- (1) contains one (1) to four (4) units; and
- (2) is used in whole or in part as a dwelling of a consumer.

(b) The term includes all fixtures to, structures on, and improvements to the real property.

SECTION 16. IC 24-5-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. As used in this chapter, "specifications" means the plans, detailed drawings, lists of materials, or other methods customarily used in the **home improvement residential building** industry as a whole to describe with particularity the work, workmanship, materials, and quality of materials for each **home improvement project**.

SECTION 17. IC 24-5-11-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 9. ~~Where~~ **If** a license or permit is necessary for any part of a **home real property** improvement, the **home real property** improvement contract ~~shall~~ **must be subject to conditioned upon the appropriate party** obtaining the necessary licenses or permits ~~prior to~~ **before** any work ~~commencing~~ **under the real property improvement contract commences**.

SECTION 18. IC 24-5-11-10, AS AMENDED BY P.L.82-2012, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. (a) ~~The home~~ **A real property** improvement supplier shall provide a completed **home real property** improvement contract to the consumer before it is signed by the consumer. Except as provided in subsection (c), **and subject to subsection (e) and section 10.6 of this chapter for contracts entered into after June 30, 2017,** the contract must contain at a minimum the following:

- (1) The name of the consumer and the address of the ~~residential~~ **real property** that is the subject of the **home real property** improvement.
- (2) The **following information**:
 - (A) The name and address of the **home real property** improvement supplier and, ~~each of the telephone numbers and names of any~~ **for a real property improvement contract executed after June 30, 2017, an electronic mail address maintained and used by the real property improvement supplier to communicate with consumers.**
 - (B) The **following information with respect to each owner, officer, employee, or agent of the real property improvement supplier** to whom consumer problems and inquiries can be directed:
 - (i) Name.



(ii) Telephone number.

(iii) For a real property improvement contract executed after June 30, 2017, an electronic mail address maintained and used by the owner, officer, employee, or agent to communicate with consumers.

(3) The date the ~~home~~ **real property** improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the ~~home~~ **real property** improvement contract.

(4) A reasonably detailed description of the proposed ~~home~~ **real property** improvements.

(5) If the description required by subdivision (4) does not include the specifications for the ~~home~~ **real property** improvement, a statement that the specifications will be provided to the consumer before ~~commencing~~ any work is **commenced under the real property improvement contract** and that the ~~home~~ **real property** improvement contract is subject to the consumer's separate written and dated approval of the specifications.

(6) The approximate starting and completion dates of the ~~home~~ **real property** improvements.

(7) A statement of any contingencies that would materially change the approximate completion date.

(8) The ~~home~~ **real property** improvement contract price.

(9) Subject to subsections (b) and (c)(8), for a real property improvement contract executed after June 30, 2017, a statement as to whether any third party, including any:

(A) subcontractor;

(B) vendor; or

(C) other person;

that is not a party to the contract, will lease or furnish any labor, services, material, equipment, or machinery to, or on behalf of, the real property improvement supplier in connection with the real property improvement.

~~(9)~~ (10) Signature lines for the ~~home~~ **real property** improvement supplier or the supplier's agent and for each consumer who is to be a party to the ~~home~~ **real property** improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

(b) The ~~home~~ **real property** improvement contract must be in a form that each consumer who is a party to it can reasonably read and understand.

(c) If a ~~home~~ **real property** improvement contract is entered into for



damage, loss, or expense that is to be paid, in whole or in part, from the proceeds of a ~~personal line property and casualty insurance policy or a commercial line farm~~ **an** insurance policy, ~~that insures residential property,~~ or for damage, loss, or expense for which a third party is liable, the following conditions and requirements apply to the ~~home~~ **real property** improvement contract:

(1) For the purpose of subsection (a)(4) through (a)(7), the description, completion dates, and statement of contingencies must be prepared for the proposed ~~home~~ **real property** improvements to the extent that the damage, loss, or expense is reasonably known by the ~~home~~ **real property** improvement supplier.

(2) For the purpose of subsection (a)(4), the requirement that a reasonably detailed description be included in the contract may be satisfied with a statement that the subject real estate will be repaired or restored to the same condition in which the real estate existed before the damage, loss, or expense occurred, or to a comparable condition.

(3) For the purpose of subsection (a)(6), the starting and completion dates may be expressed in terms of the number of days elapsed from the date when sufficient approval of the insurance carrier terms allowing for adequate repair or restoration is obtained.

(4) For the purpose of subsection (a)(8), the consumer or insured consumer may agree to a contract price expressed in terms of the consumer's or insured consumer's liability for payment after the application of insurance proceeds or payments from a liable third party.

(5) The consumer or insured consumer may elect, in writing, to authorize the commencement of work on the ~~home~~ **real property** before the consumer or insured consumer receives complete specifications. However, a consumer or an insured consumer who elects to authorize the commencement of work under this subdivision is obligated for the ~~home~~ **real property** improvements specified and, **if applicable**, agreed to by the insurance carrier.

(6) This subdivision applies to a ~~home~~ **real property** improvement contract that is entered into by a ~~home~~ **real property** improvement supplier and an insured consumer after June 30, 2012, **and before July 1, 2017**, and that includes one (1) or more exterior ~~home~~ improvements. Before entering into a ~~home~~ **real property** improvement contract that is to be paid, in



whole or in part, from the proceeds of a ~~personal line property and casualty insurance policy or a commercial line farm~~ **an** insurance policy, ~~that insures residential property~~, the **home real property** improvement supplier must inform the insured consumer of the insured consumer's rights under section 10.5(b) of this chapter by doing the following:

(A) Furnishing to the insured consumer the following statement: "You may cancel this contract at any time before midnight on the third business day after you have received written notification from your insurance company that all or any part of the claim or contract is not a covered loss under the insurance policy. See attached notice of cancellation form for an explanation of this right."

(B) Furnishing to the insured consumer a form, in duplicate, that is captioned "NOTICE OF CANCELLATION" and is attached to the contract but easily detachable, and that contains the following statement in at least 10 point, boldface type:

"NOTICE OF CANCELLATION

If you are notified by your insurance company that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of **home real property** improvement supplier) at (address of **home real property** improvement supplier's place of business) at any time before midnight on the third business day after you have received such notice from your insurance company.

If you cancel the contract, any payments made by you under the contract will be returned to you within ten (10) business days following receipt by (name of **home real property** improvement supplier) of your cancellation notice, minus any amounts you may owe for work already done by (name of **home real property** improvement supplier).

I HEREBY CANCEL THIS TRANSACTION

(date)

(insured consumer's signature)".

(7) This subdivision applies to a **home real property** improvement contract that is entered into as a result of damage, loss, or expense that is to be paid, in whole or in part, from the



proceeds of a ~~personal line property and casualty insurance policy~~ or a ~~commercial line farm~~ **an** insurance policy. ~~that insures residential property.~~ However, this subdivision does not apply to a consumer and a **home real property** improvement supplier that have a prior business relationship. After June 30, 2012, a **home real property** improvement supplier may not enter into a **home real property** improvement contract to which this subdivision applies unless one (1) or more of the following apply:

(A) The **home real property** improvement supplier resides, is domiciled, or is authorized to do business in Indiana.

(B) The **home real property** improvement supplier maintains in Indiana one (1) or more fixed physical locations from which the **home real property** improvement supplier engages in or solicits **home real property** improvement contracts.

(C) The **home real property** improvement supplier has appointed a resident agent in Indiana for service of legal process.

(8) This subdivision applies to a real property improvement contract that is entered into by a real property improvement supplier and an insured consumer after June 30, 2017, and in connection with which a third party described in subsection (a)(9) will lease or furnish labor, services, material, equipment, or machinery to, or on behalf of, the real property improvement supplier. Subject to subsection (b), a real property improvement contract to which this subdivision applies must include, in addition to the statement required under subsection (a)(9), a statement that neither the real property improvement supplier nor a third party described in subsection (a)(9) may initiate or pursue a claim with the insured consumer's insurance company.

(d) A modification to a **home real property** improvement contract is not enforceable against a consumer unless the modification is stated in a writing that is signed by the consumer.

(e) This subsection applies to a real property improvement contract that is executed after June 30, 2017, and in connection with which a third party described in subsection (a)(9) leases or furnishes labor, services, material, equipment, or machinery to, or on behalf of, the real property improvement supplier that is a party to the contract. Neither the real property improvement supplier nor a party described in subsection (a)(9) may initiate or pursue a claim with an insured consumer's insurance company.

(f) A real property improvement contract may not assign any



rights of the consumer to any supplier or third parties.

(g) A real property improvement contract must reflect the full amount of the contract price less any discounts offered.

(h) A real property improvement supplier or third party who recklessly, knowingly, or intentionally impersonates a consumer commits a Class A misdemeanor.

SECTION 19. IC 24-5-11-10.5, AS ADDED BY P.L.82-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10.5. (a) A **home real property** improvement supplier shall not advertise, offer, or promise to pay or rebate any part of an insurance deductible to induce a person to enter into a **home real property** improvement contract or otherwise purchase goods or services from the **home real property** improvement supplier. Acts prohibited by this subsection include the following:

(1) Advertising, offering, or promising to grant an allowance or a discount against the **home real property** improvement contract price or against other fees or charges.

(2) Advertising, offering, or promising to pay to an insured consumer, or to any other person, any form of compensation, including a gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason, including the display of a sign or advertisement on ~~residential~~ **real property**.

(b) This subsection applies to a **home real property** improvement contract that is entered into by a **home real property** improvement supplier and an insured consumer after June 30, 2012, **and before July 1, 2017**, and that includes one (1) or more exterior **home** improvements. An insured consumer who enters into a **home real property** improvement contract for which the **home real property** improvement contract price, or charges for other goods and services under the contract, are to be paid, in whole or in part, from the proceeds of a ~~personal line property and casualty insurance policy or a commercial line farm~~ **an insurance policy, that insures residential property**, may cancel the contract before midnight on the third business day after the insured consumer has received written notice from the insurance company that any part of the claim or contract is not a covered loss under the insurance policy. An insured consumer who seeks to cancel a **home real property** improvement contract under this subsection must provide to the **home real property** improvement supplier, at the address specified in the form provided under section 10(c)(6)(B) of this chapter, written notice of the insured consumer's intent not to be bound by the contract. If the notice of cancellation is sent by mail, the notice is effective upon deposit of the notice into the



United States mail, with postage prepaid and the notice properly addressed to the **home real property** improvement supplier. Subject to subsection (c), not later than ten (10) days after a **home real property** improvement contract is cancelled under this subsection, the **home real property** improvement supplier shall tender to the insured consumer:

- (1) any payment or deposit made by the insured consumer; and
- (2) any note or other evidence of indebtedness of the insured consumer.

(c) If:

- (1) an insured consumer cancels a **home real property** improvement contract under subsection (b); and
- (2) the **home real property** improvement supplier has performed emergency or temporary services that the insured consumer acknowledged in writing before their performance to be necessary to prevent damage to the residential property;

the **home real property** improvement supplier is entitled to the reasonable value of the emergency or temporary services performed.

(d) A **home real property** improvement supplier shall not act as a public adjuster (as defined in IC 27-1-27-1).

SECTION 20. IC 24-5-11-10.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 10.6. (a) This section applies to a real property improvement contract that is entered into by a real property improvement supplier and a consumer after June 30, 2017.**

(b) Before entering into a real property improvement contract with a consumer, the real property improvement supplier must inform the consumer of the consumer's rights under this section by doing the following:

(1) Furnishing to the consumer the following statement: "You may cancel this contract at any time before midnight on the third business day after the later of the following:

(A) The date this contract is signed by you and (name of real property improvement supplier).

(B) If applicable, the date you receive written notification from your insurance company of a final determination as to whether all or any part of your claim or this contract is a covered loss under your insurance policy.

See attached notice of cancellation form for an explanation of this right."

(2) Furnishing to the consumer a form, in duplicate, that is



captioned "NOTICE OF CANCELLATION" and is attached to the contract but easily detachable, and that contains the following statement in at least 10 point, boldface type:

"NOTICE OF CANCELLATION

You may cancel this contract by mailing, delivering, or submitting by electronic mail a signed and dated copy of this cancellation notice or any other written notice to (name of real property improvement supplier) at (address of real property improvement supplier's place of business), or (electronic mail address described in section 10(a)(2)(A) or 10(a)(2)(B)(iii) of this chapter), at any time before midnight on the third business day after the later of the following:

(A) The date this contract is signed by you and (name of real property improvement supplier).

(B) If applicable, the date you receive written notification from your insurance company of a final determination as to whether all or any part of your claim or this contract is a covered loss under your insurance policy.

If you cancel this contract, any payments made by you under the contract will be returned to you within ten (10) business days following receipt by (name of real property improvement supplier) of your cancellation notice, minus any amounts you may owe for work already done by (name of real property improvement supplier).

I HEREBY CANCEL THIS TRANSACTION

(date)

(consumer's signature)".

(c) A consumer may cancel a real property improvement contract under this section before midnight on the third business day after the later of the following:

(1) The date the real property improvement contract is signed by the consumer and the real property improvement supplier.

(2) If applicable, the date the consumer receives written notification from the consumer's insurance company of a final determination as to whether all or any part of the consumer's claim or the real property improvement contract is a covered loss under the consumer's insurance policy.

(d) A consumer who seeks to cancel a real property improvement contract under this section must provide to the real property improvement supplier, at the address or electronic mail



address specified in the form provided under subsection (b), written notice of the consumer's intent not to be bound by the contract. If the notice of cancellation is sent by mail, the notice is effective upon deposit of the notice into the United States mail, with postage prepaid and the notice properly addressed to the real property improvement supplier. If the notice of cancellation is submitted by electronic mail, the notice is effective on the date it is electronically submitted. Subject to subsection (e), not later than ten (10) days after a real property improvement contract is canceled under this section, the real property improvement supplier shall tender to the consumer:

- (1) any payment or deposit made by the consumer; and
- (2) any note or other evidence of indebtedness of the consumer.

(e) If:

- (1) a consumer cancels a real property improvement contract under this section; and
- (2) the real property improvement supplier has performed emergency or temporary services that the consumer acknowledged in writing before their performance to be necessary to prevent damage to the real property;

the real property improvement supplier is entitled to the reasonable value of the emergency or temporary services performed.

SECTION 21. IC 24-5-11-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. Before ~~the~~ a consumer signs ~~the home~~ a real property improvement contract and before the consumer can be required to make any down payment **in connection with the real property improvement contract**, the ~~home~~ **real property** improvement supplier must have agreed unequivocally by written signature to all of the terms of the ~~home~~ **real property** improvement contract.

SECTION 22. IC 24-5-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. ~~The home~~ A **real property** improvement supplier shall give a fully executed copy of ~~the home~~ a **real property** improvement contract to the consumer immediately after the consumer signs it. The **real property improvement** contract must ~~also~~ show the dates the **real property improvement** supplier and each consumer executed the contract.

SECTION 23. IC 24-5-11-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 14. A ~~home~~ **real property** improvement supplier who violates this chapter commits a



deceptive act that is actionable by the attorney general or by a consumer under IC 24-5-0.5-4 and is subject to the remedies and penalties under IC 24-5-0.5.

SECTION 24. IC 35-52-24-24.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 24.5. IC 24-5-11-10(h) defines a crime concerning the impersonation of a consumer by a real property improvement supplier or third party.**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 353 — Concur

