

# SENATE BILL No. 378

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5.

**Synopsis:** Business locations of floral products suppliers. Prohibits a floral products supplier from misrepresenting the geographic location of the floral products supplier's business by listing or including: (1) a local telephone number; or (2) a fictitious business name or an assumed business name; in any advertisement, local telephone directory, or directory assistance data base unless the advertisement, the listing in the local telephone directory, or the directory assistance operator or recording identifies the true physical address of the floral products supplier's business. Provides that a person that violates this provision commits a deceptive act and is subject to the penalties and remedies set forth in the statute concerning deceptive consumer sales. Provides that certain persons that distribute, publish, communicate, or display certain communications on behalf of floral products suppliers do not violate this provision if the persons do not: (1) change the content of the communications; or (2) knowingly distribute, publish, communicate, or display any information that misrepresents the geographic location of a floral products supplier's business.

**Effective:** July 1, 2014.

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January 14, 2014, read first time and referred to Committee on Civil Law.

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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.

# SENATE BILL No. 378



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

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

1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.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) **This subdivision applies to a supplier other than a floral**  
 21 **products supplier (as defined in IC 24-5-27-3).** The act of  
 22 misrepresenting the geographic location of the supplier by listing  
 23 a fictitious business name or an assumed business name (as  
 24 described in IC 23-15-1) in a local telephone directory if:  
 25 (A) the name misrepresents the supplier's geographic location;  
 26 (B) the listing fails to identify the locality and state of the  
 27 supplier's business;  
 28 (C) calls to the local telephone number are routinely forwarded  
 29 or otherwise transferred to a supplier's business location that  
 30 is outside the calling area covered by the local telephone  
 31 directory; and  
 32 (D) the supplier's business location is located in a county that  
 33 is not contiguous to a county in the calling area covered by the  
 34 local telephone directory.
- 35 (16) **This subdivision applies to a supplier other than a floral**  
 36 **products supplier (as defined in IC 24-5-27-3).** The act of  
 37 listing a fictitious business name or assumed business name (as  
 38 described in IC 23-15-1) in a directory assistance data base if:  
 39 (A) the name misrepresents the supplier's geographic location;  
 40 (B) calls to the local telephone number are routinely forwarded  
 41 or otherwise transferred to a supplier's business location that  
 42 is outside the local calling area; and



- 1 (C) the supplier's business location is located in a county that  
2 is not contiguous to a county in the local calling area.
- 3 (17) The violation by a supplier of IC 24-3-4 concerning  
4 cigarettes for import or export.
- 5 (18) The act of a supplier in knowingly selling or reselling a  
6 product to a consumer if the product has been recalled, whether  
7 by the order of a court or a regulatory body, or voluntarily by the  
8 manufacturer, distributor, or retailer, unless the product has been  
9 repaired or modified to correct the defect that was the subject of  
10 the recall.
- 11 (19) The violation by a supplier of 47 U.S.C. 227, including any  
12 rules or regulations issued under 47 U.S.C. 227.
- 13 (20) The violation by a supplier of the federal Fair Debt  
14 Collection Practices Act (15 U.S.C. 1692 et seq.), including any  
15 rules or regulations issued under the federal Fair Debt Collection  
16 Practices Act (15 U.S.C. 1692 et seq.).
- 17 (21) A violation of IC 24-5-7 (concerning health spa services), as  
18 set forth in IC 24-5-7-17.
- 19 (22) A violation of IC 24-5-8 (concerning business opportunity  
20 transactions), as set forth in IC 24-5-8-20.
- 21 (23) A violation of IC 24-5-10 (concerning home consumer  
22 transactions), as set forth in IC 24-5-10-18.
- 23 (24) A violation of IC 24-5-11 (concerning home improvement  
24 contracts), as set forth in IC 24-5-11-14.
- 25 (25) A violation of IC 24-5-12 (concerning telephone  
26 solicitations), as set forth in IC 24-5-12-23.
- 27 (26) A violation of IC 24-5-13.5 (concerning buyback motor  
28 vehicles), as set forth in IC 24-5-13.5-14.
- 29 (27) A violation of IC 24-5-14 (concerning automatic  
30 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 31 (28) A violation of IC 24-5-15 (concerning credit services  
32 organizations), as set forth in IC 24-5-15-11.
- 33 (29) A violation of IC 24-5-16 (concerning unlawful motor  
34 vehicle subleasing), as set forth in IC 24-5-16-18.
- 35 (30) A violation of IC 24-5-17 (concerning environmental  
36 marketing claims), as set forth in IC 24-5-17-14.
- 37 (31) A violation of IC 24-5-19 (concerning deceptive commercial  
38 solicitation), as set forth in IC 24-5-19-11.
- 39 (32) A violation of IC 24-5-21 (concerning prescription drug  
40 discount cards), as set forth in IC 24-5-21-7.
- 41 (33) A violation of IC 24-5-23.5-7 (concerning real estate  
42 appraisals), as set forth in IC 24-5-23.5-9.



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



1 (g) For purposes of subsection (a)(18), it is an affirmative defense  
 2 to any action brought under this chapter that the product has been  
 3 altered by a person other than the defendant to render the product  
 4 completely incapable of serving its original purpose.

5 SECTION 2. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS  
 6 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 7 1, 2014]:

8 **Chapter 27. Business Location Representations by Floral**  
 9 **Products Suppliers**

10 **Sec. 1. As used in this chapter, "directory assistance" has the**  
 11 **meaning set forth in IC 24-5-0.5-2(b)(1).**

12 **Sec. 2. As used in this chapter, "floral or ornamental products**  
 13 **or services" means floral arrangements, cut flowers, floral**  
 14 **bouquets, potted plants, balloons, floral designs, and related**  
 15 **products and services.**

16 **Sec. 3. As used in this chapter, "floral products supplier" means**  
 17 **a person that regularly:**

18 (1) enters into with Indiana residents; or

19 (2) advertises or solicits by mail, brochure, telephone, print,  
 20 radio, television, the Internet, or electronic means in Indiana;  
 21 retail consumer transactions involving the sale of floral or  
 22 ornamental products or services, regardless of whether the person  
 23 has a physical presence in Indiana.

24 **Sec. 4. As used in this chapter, "local telephone directory" has**  
 25 **the meaning set forth in IC 24-5-0.5-2(b)(2).**

26 **Sec. 5. As used in this chapter, "local telephone number" has the**  
 27 **meaning set forth in IC 24-5-0.5-2(b)(3).**

28 **Sec. 6. A floral products supplier shall not misrepresent the**  
 29 **geographic location of the floral products supplier's business by**  
 30 **doing any of the following:**

31 (1) Listing or including a local telephone number in any:

32 (A) advertisement described in section 3(2) of this chapter;

33 (B) local telephone directory; or

34 (C) directory assistance data base;

35 unless the advertisement, the listing in the local telephone  
 36 directory, or the directory assistance operator or recording  
 37 identifies the true physical address, including the locality and  
 38 state, of the floral products supplier's business.

39 (2) Listing or including a fictitious business name or an  
 40 assumed business name (as described in IC 23-15-1) in any  
 41 advertisement, local telephone directory, or directory  
 42 assistance data base if:



1 (A) the name misrepresents the geographic location of the  
2 floral products supplier's business; and

3 (B) the advertisement, the listing in the local telephone  
4 directory, or the directory assistance operator or  
5 recording does not identify the true physical address,  
6 including the locality and state, of the floral products  
7 supplier's business.

8 **Sec. 7. A person that violates section 6 of this chapter commits**  
9 **a deceptive act under IC 24-5-0.5 and is subject to the penalties and**  
10 **remedies set forth in IC 24-5-0.5. However, a person described in**  
11 **subdivisions (1) through (5) that distributes, publishes,**  
12 **communicates, or displays advertisements, listings, or other**  
13 **communications on behalf of a floral products supplier does not**  
14 **violate this chapter if the person does not change the content of the**  
15 **advertisements, listings, or communications and does not**  
16 **knowingly distribute, publish, communicate, or display any**  
17 **information that misrepresents the geographic location of the**  
18 **floral products supplier's business:**

19 (1) the publisher of:

20 (A) a local telephone directory; or

21 (B) another publication providing information about, or  
22 advertisements for, local businesses;

23 (2) the provider of a directory assistance service;

24 (3) an Internet web site that aggregates and provides  
25 information about other businesses;

26 (4) an Internet service provider; or

27 (5) an Internet service that displays or distributes  
28 advertisements or communications for other businesses.

