



January 29, 2014

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## SENATE BILL No. 394

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DIGEST OF SB 394 (Updated January 27, 2014 2:54 pm - DI 106)

**Citations Affected:** IC 4-6; IC 23-17; IC 24-4.7; IC 24-5.

**Synopsis:** Consumer protection. Makes various changes to consumer protection provisions enforced by the attorney general, including: (1) enforcement of investigative demands by the attorney general; (2) acceptance of written assurance of voluntary compliance for certain violations concerning nonprofit corporations; and (3) changes to the definition of "consumer transaction" and to acts, omissions, and practices by a supplier that are prohibited in connection with consumer transactions for purposes of the deceptive consumer sales law.

**Effective:** July 1, 2014.

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### Bray, Zakas, Tallian

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January 14, 2014, read first time and referred to Committee on Civil Law.  
January 28, 2014, amended, reported favorably — Do Pass.

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SB 394—LS 6784/DI 110





January 29, 2014

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. 394

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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 4-6-3-6, AS AMENDED BY P.L.136-2007,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]: Sec. 6. **(a)** If a person objects or otherwise fails to obey  
4 a written demand issued under section 3 of this chapter, the attorney  
5 general may file in the circuit or superior court of the county in which  
6 that person resides or maintains a principal place of business within the  
7 state an application for an order to enforce the demand. If the person  
8 does not reside or maintain a principal place of business in Indiana, the  
9 application for the order to enforce the demand may be filed in the  
10 Marion County circuit or superior court. Notice of hearing and a copy  
11 of the application shall be served upon that person, who may appear in  
12 opposition to the application. The attorney general must demonstrate  
13 to the court that the demand is proper. If the court finds that the  
14 demand is proper, it shall order that person to comply with the demand,  
15 subject to such modification as the court may prescribe.  
16 **(b) If a person fails or refuses to obey a final order entered**

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1 **under subsection (a) or an order imposing sanctions under section**  
 2 **6.5 of this chapter, the court may hold the person in contempt.**

3 (c) Upon motion by that person and for good cause shown, the court  
 4 may make any further order in the proceedings which justice requires  
 5 to protect the person from unreasonable annoyance, embarrassment,  
 6 oppression, burden, expense, or to protect privileged information, trade  
 7 secrets or information which is confidential under any other provision  
 8 of law. If the court finds that either party has acted in bad faith in  
 9 seeking or resisting the demand, it may order that person to pay the  
 10 other parties reasonable expenses including attorneys' attorney's fees.

11 SECTION 2. IC 4-6-3-6.5 IS ADDED TO THE INDIANA CODE  
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 13 1, 2014]: **Sec. 6.5. (a) This section applies only to a:**

- 14 (1) **foreign corporation that does business in Indiana;**  
 15 (2) **foreign limited liability company that does business in**  
 16 **Indiana; and**  
 17 (3) **person who does not reside or maintain a principal place**  
 18 **of business in Indiana.**

19 (b) **If a person listed in subsection (a) fails or refuses to comply**  
 20 **with a written demand issued under section 3 of this chapter, the**  
 21 **court may, upon the request of the attorney general or on the**  
 22 **court's own initiative, impose one (1) or more of the following**  
 23 **sanctions against the person:**

- 24 (1) **Granting injunctive relief to restrain the person from**  
 25 **engaging in the:**  
 26 (A) **advertising or sale of any merchandise; or**  
 27 (B) **conducting of any trade or commerce;**  
 28 **if the alleged or suspected violation involves the merchandise,**  
 29 **trade, or commerce.**  
 30 (2) **Revoking or suspending the certificate of authority of the**  
 31 **person to do business in Indiana.**  
 32 (3) **Enjoining the person from doing business with or being a**  
 33 **contractor for the state of Indiana.**  
 34 (4) **Revoking or suspending any other license, permit, or**  
 35 **certificate issued under law to the person which is necessary**  
 36 **to perform services or engage in transactions in the industry,**  
 37 **field, or trade that the alleged or suspected violation under**  
 38 **this chapter occurred.**  
 39 (5) **Granting other relief as may be required, until the person**  
 40 **fully complies with the investigative demand.**

41 SECTION 3. IC 4-6-3-9 IS AMENDED TO READ AS FOLLOWS  
 42 [EFFECTIVE JULY 1, 2014]: **Sec. 9. (a) All documentary material,**



1 answers to written interrogatories, and transcripts of oral testimony that  
 2 are provided pursuant to an investigative demand shall be kept  
 3 confidential by the attorney general until an action is filed against a  
 4 person for the violation under investigation, unless:

5 (1) confidentiality is waived by the person being investigated and  
 6 the person who has testified, answered interrogatories, or  
 7 produced documentary material; or ~~unless~~

8 (2) disclosure is ~~authorized by the court~~ **made by the attorney**  
 9 **general to another state or federal attorney general or law**  
 10 **enforcement agency** for the purposes of interstate cooperation in  
 11 law enforcement of state or federal laws.

12 **(b) All documentary material, answers to written**  
 13 **interrogatories, and transcripts of oral testimony that are provided**  
 14 **to the attorney general pursuant to an investigative demand issued**  
 15 **by another state or federal attorney general or law enforcement**  
 16 **agency under similar authority shall be treated as if it was**  
 17 **obtained pursuant to an investigative demand issued by the**  
 18 **attorney general under section 3 of this chapter.**

19 SECTION 4. IC 23-17-24-1.5, AS ADDED BY P.L.245-2005,  
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 2014]: Sec. 1.5. (a) This section applies to the following:

22 (1) Notwithstanding IC 23-17-1-1, all corporations organized  
 23 under Indiana law for a purpose for which a corporation may be  
 24 organized under this article, regardless of the date of  
 25 incorporation.

26 (2) A foreign corporation that desires to transact business in  
 27 Indiana.

28 (b) In addition to a dissolution under section 1 of this chapter, the  
 29 attorney general may petition a court to issue one (1) or more of the  
 30 following remedies:

31 (1) Injunctive relief.

32 (2) Appointment of temporary or permanent receivers.

33 (3) Permanent removal of trustees, corporate officers, or directors  
 34 who have breached the fiduciary duty.

35 (4) Appointment of permanent court approved replacement  
 36 trustees, corporate officers or directors, and members.

37 (c) The attorney general may seek a remedy against any or all of the  
 38 following:

39 (1) If the attorney general establishes a condition enumerated in  
 40 section 1(a)(1) of this chapter, a corporation.

41 (2) For a violation of the officer's duties under IC 23-17-14-2, a  
 42 corporate officer.



1 (3) For a violation of IC 23-17-13, a corporate director.

2 (d) **In addition to any remedies described in subsection (b), the**  
 3 **attorney general may accept a written assurance of voluntary**  
 4 **compliance with respect to:**

5 (1) **a past, an existing, or an imminent condition enumerated**  
 6 **in section 1(a)(1) of this chapter; or**

7 (2) **any past, existing, or imminent violation of a duty under**  
 8 **this article by a corporation, director, officer, member,**  
 9 **trustee, or other corporate principal.**

10 (e) **An assurance of voluntary compliance described in**  
 11 **subsection (d) may include a stipulation for the voluntary payment**  
 12 **by the person of:**

13 (1) **the costs of an investigation;**

14 (2) **an amount to be held in escrow pending the outcome of an**  
 15 **action;**

16 (3) **an amount to be held in escrow pending the outcome of an**  
 17 **action as restitution to an aggrieved nonprofit corporation or**  
 18 **person; or**

19 (4) **both amounts described in subdivisions (2) and (3).**

20 (f) **An assurance of voluntary compliance described subsection**  
 21 **(d):**

22 (1) **must be filed with; and**

23 (2) **is subject to the approval of;**

24 **the court having jurisdiction.**

25 (g) **An assurance of voluntary compliance described in**  
 26 **subsection (d) is not considered an admission of a violation of any**  
 27 **law. However, a violation of the terms of the assurance of**  
 28 **voluntary compliance constitutes prima facie evidence of a**  
 29 **violation of this article.**

30 (h) **If the attorney general closes a matter by accepting an**  
 31 **assurance of voluntary compliance described in subsection (d), the**  
 32 **attorney general may reopen the matter for further proceedings**  
 33 **within the period of the applicable statute of limitations.**

34 SECTION 5. IC 24-4.7-3-6, AS AMENDED BY P.L.151-2013,  
 35 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2014]: Sec. 6. (a) The consumer protection division telephone  
 37 solicitation fund is established for the purpose of the administration of:

38 (1) this article;

39 (2) ~~IC 24-5-0.5-3(a)(19)~~; **IC 24-5-0.5-3(b)(19)**; and

40 (3) IC 24-5-14.5.

41 The fund shall be used exclusively for this purpose.

42 (b) The division shall administer the fund.



1 (c) The division shall deposit all revenue received:

2 (1) under this article;

3 (2) from civil penalties deposited under IC 24-5-0.5-4(h); and

4 (3) from civil penalties deposited under IC 24-5-14.5-12;

5 in the fund.

6 (d) Money in the fund is continuously appropriated to the division  
7 for the administration of:

8 (1) this article;

9 (2) ~~IC 24-5-0.5-3(a)(19)~~; **IC 24-5-0.5-3(b)(19)**; and

10 (3) IC 24-5-14.5.

11 (e) Money in the fund at the end of a state fiscal year does not revert  
12 to the state general fund. However, if the amount of money in the fund  
13 at the end of a particular state fiscal year exceeds two hundred  
14 thousand dollars (\$200,000), the treasurer of state shall transfer the  
15 excess from the fund to the state general fund.

16 SECTION 6. IC 24-5-0.5-2, AS AMENDED BY P.L.250-2013,  
17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 2014]: Sec. 2. (a) As used in this chapter:

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

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

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

35 ~~(C) Collecting or attempting to collect a debt owed or due, or  
36 asserted to be owed or due, to another person.~~

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

39 (2) "Person" means an individual, corporation, the state of Indiana  
40 or its subdivisions or agencies, business trust, estate, trust,  
41 partnership, association, nonprofit corporation or organization, or  
42 cooperative or any other legal entity.



- 1 (3) "Supplier" means the following:  
 2 (A) A seller, lessor, assignor, or other person who regularly  
 3 engages in or solicits consumer transactions, including  
 4 soliciting a consumer transaction by using a telephone  
 5 facsimile machine to transmit an unsolicited advertisement.  
 6 The term includes a manufacturer, wholesaler, or retailer,  
 7 whether or not the person deals directly with the consumer.  
 8 (B) A person who contrives, prepares, sets up, operates,  
 9 publicizes by means of advertisements, or promotes a pyramid  
 10 promotional scheme.  
 11 (C) A debt collector.
- 12 (4) "Subject of a consumer transaction" means the personal  
 13 property, real property, services, or intangibles offered or  
 14 furnished in a consumer transaction.
- 15 (5) "Cure" as applied to a deceptive act, means either:  
 16 (A) to offer in writing to adjust or modify the consumer  
 17 transaction to which the act relates to conform to the  
 18 reasonable expectations of the consumer generated by such  
 19 deceptive act and to perform such offer if accepted by the  
 20 consumer; or  
 21 (B) to offer in writing to rescind such consumer transaction  
 22 and to perform such offer if accepted by the consumer.  
 23 The term includes an offer in writing of one (1) or more items of  
 24 value, including monetary compensation, that the supplier  
 25 delivers to a consumer or a representative of the consumer if  
 26 accepted by the consumer.
- 27 (6) "Offer to cure" as applied to a deceptive act is a cure that:  
 28 (A) is reasonably calculated to remedy a loss claimed by the  
 29 consumer; and  
 30 (B) includes a minimum additional amount that is the greater  
 31 of:  
 32 (i) ten percent (10%) of the value of the remedy under  
 33 clause (A), but not more than four thousand dollars  
 34 (\$4,000); or  
 35 (ii) five hundred dollars (\$500);  
 36 as compensation for attorney's fees, expenses, and other costs  
 37 that a consumer may incur in relation to the deceptive act.
- 38 (7) "Uncured deceptive act" means a deceptive act:  
 39 (A) with respect to which a consumer who has been damaged  
 40 by such act has given notice to the supplier under section 5(a)  
 41 of this chapter; and  
 42 (B) either:





- 1 (i) no offer to cure has been made to such consumer within  
 2 thirty (30) days after such notice; or  
 3 (ii) the act has not been cured as to such consumer within a  
 4 reasonable time after the consumer's acceptance of the offer  
 5 to cure.
- 6 (8) "Incurable deceptive act" means a deceptive act done by a  
 7 supplier as part of a scheme, artifice, or device with intent to  
 8 defraud or mislead. The term includes a failure of a transferee of  
 9 structured settlement payment rights to timely provide a true and  
 10 complete disclosure statement to a payee as provided under  
 11 IC 34-50-2 in connection with a direct or indirect transfer of  
 12 structured settlement payment rights.
- 13 (9) "Pyramid promotional scheme" means any program utilizing  
 14 a pyramid or chain process by which a participant in the program  
 15 gives a valuable consideration exceeding one hundred dollars  
 16 (\$100) for the opportunity or right to receive compensation or  
 17 other things of value in return for inducing other persons to  
 18 become participants for the purpose of gaining new participants  
 19 in the program. The term does not include ordinary sales of goods  
 20 or services to persons who are not purchasing in order to  
 21 participate in such a scheme.
- 22 (10) "Promoting a pyramid promotional scheme" means:  
 23 (A) inducing or attempting to induce one (1) or more other  
 24 persons to become participants in a pyramid promotional  
 25 scheme; or  
 26 (B) assisting another in promoting a pyramid promotional  
 27 scheme.
- 28 (11) "Senior consumer" means an individual who is at least sixty  
 29 (60) years of age.
- 30 (12) "Telephone facsimile machine" means equipment that has  
 31 the capacity to transcribe text or images, or both, from:  
 32 (A) paper into an electronic signal and to transmit that signal  
 33 over a regular telephone line; or  
 34 (B) an electronic signal received over a regular telephone line  
 35 onto paper.
- 36 (13) "Unsolicited advertisement" means material advertising the  
 37 commercial availability or quality of:  
 38 (A) property;  
 39 (B) goods; or  
 40 (C) services;  
 41 that is transmitted to a person without the person's prior express  
 42 invitation or permission, in writing or otherwise.



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

2 (15) "Debt collector" has the meaning set forth in 15 U.S.C.  
3 1692a(6). The term does not include a person admitted to the  
4 practice of law in Indiana if the person is acting within the course  
5 and scope of the person's practice as an attorney.

6 (b) As used in section ~~3(a)(15) and 3(a)(16)~~ **3(b)(15) and 3(b)(16)**  
7 of this chapter:

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

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

18 (3) "Local telephone number" refers to a telephone number that  
19 has the three (3) number prefix used by the provider of telephone  
20 service for telephones physically located within the area covered  
21 by the local telephone directory in which the number is listed. The  
22 term does not include long distance numbers or 800-, 888-, or  
23 900- exchange numbers listed in a local telephone directory.

24 SECTION 7. IC 24-5-0.5-3, AS AMENDED BY P.L.273-2013,  
25 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
26 JULY 1, 2014]: Sec. 3. **(a) A supplier may not commit an unfair,  
27 abusive, or deceptive act, omission, or practice in connection with  
28 a consumer transaction. Such an act, omission, or practice by a  
29 supplier is a violation of this chapter whether it occurs before,  
30 during, or after the transaction. An act, omission, or practice  
31 prohibited by this section includes both implicit and explicit  
32 misrepresentations.**

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

37 (1) That such subject of a consumer transaction has sponsorship,  
38 approval, performance, characteristics, accessories, uses, or  
39 benefits it does not have which the supplier knows or should  
40 reasonably know it does not have.

41 (2) That such subject of a consumer transaction is of a particular  
42 standard, quality, grade, style, or model, if it is not and if the



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



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



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



- 1 (33) A violation of IC 24-5-23.5-7 (concerning real estate  
2 appraisals), as set forth in IC 24-5-23.5-9.
- 3 (34) A violation of IC 24-5-26 (concerning identity theft), as set  
4 forth in IC 24-5-26-3.
- 5 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),  
6 as set forth in IC 24-5.5-6-1.
- 7 (36) A violation of IC 24-8 (concerning promotional gifts and  
8 contests), as set forth in IC 24-8-6-3.
- 9 (37) A violation of IC 21-18.5-6 (concerning representations  
10 made by a postsecondary credit bearing proprietary educational  
11 institution), as set forth in IC 21-18.5-6-22.5.
- 12 ~~(b)~~ **(c)** Any representations on or within a product or its packaging  
13 or 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 ~~(e)~~ **(d)** If a supplier shows by a preponderance of the evidence that  
20 an act resulted from a bona fide error notwithstanding the maintenance  
21 of procedures reasonably adopted to avoid the error, such act shall not  
22 be deceptive within the meaning of this chapter.
- 23 ~~(d)~~ **(e)** It shall be a defense to any action brought under this chapter  
24 that the representation constituting an alleged deceptive act was one  
25 made in good faith by the supplier without knowledge of its falsity and  
26 in 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)~~ **(f)** For purposes of subsection ~~(a)(12)~~, **(b)(12)**, a supplier that  
31 provides estimates before performing repair or replacement work for  
32 a customer shall give the customer a written estimate itemizing as  
33 closely as possible the price for labor and parts necessary for the  
34 specific job before commencing the work.
- 35 ~~(f)~~ **(g)** For purposes of subsection ~~(a)(15)~~ **(b)(15)** and ~~(a)(16)~~,  
36 **(b)(16)**, a telephone company or other provider of a telephone directory  
37 or directory assistance service or its officer or agent is immune from  
38 liability for publishing the listing of a fictitious business name or  
39 assumed business name of a supplier in its directory or directory  
40 assistance database unless the telephone company or other provider of  
41 a telephone directory or directory assistance service is the same person  
42 as the supplier who has committed the deceptive act.



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

5           SECTION 8. IC 24-5-0.5-4, AS AMENDED BY P.L.250-2013,  
 6 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2014]: Sec. 4. (a) A person relying upon an uncured or  
 8 incurable deceptive act may bring an action for the damages actually  
 9 suffered as a consumer as a result of the deceptive act or five hundred  
 10 dollars (\$500), whichever is greater. The court may increase damages  
 11 for a willful deceptive act in an amount that does not exceed the greater  
 12 of:

13           (1) three (3) times the actual damages of the consumer suffering  
 14 the loss; or

15           (2) one thousand dollars (\$1,000).

16 Except as provided in subsection (j), the court may award reasonable  
 17 attorney fees to the party that prevails in an action under this  
 18 subsection. This subsection does not apply to a consumer transaction  
 19 in real property, including a claim or action involving a construction  
 20 defect (as defined in IC 32-27-3-1(5)) brought against a construction  
 21 professional (as defined in IC 32-27-3-1(4)), except for purchases of  
 22 time shares and camping club memberships. This subsection does not  
 23 apply with respect to a deceptive act described in section ~~3(a)(20)~~  
 24 **3(b)(20)** of this chapter. This subsection also does not apply to a  
 25 violation of IC 24-4.7, IC 24-5-12, IC 24-5-14, or IC 24-5-14.5. Actual  
 26 damages awarded to a person under this section have priority over any  
 27 civil penalty imposed under this chapter.

28           (b) Any person who is entitled to bring an action under subsection  
 29 (a) on the person's own behalf against a supplier for damages for a  
 30 deceptive act may bring a class action against such supplier on behalf  
 31 of any class of persons of which that person is a member and which has  
 32 been damaged by such deceptive act, subject to and under the Indiana  
 33 Rules of Trial Procedure governing class actions, except as herein  
 34 expressly provided. Except as provided in subsection (j), the court may  
 35 award reasonable attorney fees to the party that prevails in a class  
 36 action under this subsection, provided that such fee shall be determined  
 37 by the amount of time reasonably expended by the attorney and not by  
 38 the amount of the judgment, although the contingency of the fee may  
 39 be considered. Except in the case of an extension of time granted by the  
 40 attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10,  
 41 any money or other property recovered in a class action under this  
 42 subsection which cannot, with due diligence, be restored to consumers



1 within one (1) year after the judgment becomes final shall be returned  
 2 to the party depositing the same. This subsection does not apply to a  
 3 consumer transaction in real property, except for purchases of time  
 4 shares and camping club memberships. This subsection does not apply  
 5 with respect to a deceptive act described in section ~~3(a)(20)~~ **3(b)(20)**  
 6 of this chapter. Actual damages awarded to a class have priority over  
 7 any civil penalty imposed under this chapter.

8 (c) The attorney general may bring an action to enjoin a deceptive  
 9 act, including a deceptive act described in section ~~3(a)(20)~~ **3(b)(20)** of  
 10 this chapter, notwithstanding subsections (a) and (b). However, the  
 11 attorney general may seek to enjoin patterns of incurable deceptive acts  
 12 with respect to consumer transactions in real property. In addition, the  
 13 court may:

14 (1) issue an injunction;

15 (2) order the supplier to make payment of the money unlawfully  
 16 received from the aggrieved consumers to be held in escrow for  
 17 distribution to aggrieved consumers;

18 (3) for a knowing violation against a senior consumer, increase  
 19 the amount of restitution ordered under subdivision (2) in any  
 20 amount up to three (3) times the amount of damages incurred or  
 21 value of property or assets lost;

22 (4) order the supplier to pay to the state the reasonable costs of  
 23 the attorney general's investigation and prosecution related to the  
 24 action;

25 (5) provide for the appointment of a receiver; and

26 (6) order the department of state revenue to suspend the supplier's  
 27 registered retail merchant certificate, subject to the requirements  
 28 and prohibitions contained in IC 6-2.5-8-7(i), if the court finds  
 29 that a violation of this chapter involved the sale or solicited sale  
 30 of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic  
 31 drug lookalike substance (as defined in IC 35-31.5-2-321.5).

32 (d) In an action under subsection (a), (b), or (c), the court may void  
 33 or limit the application of contracts or clauses resulting from deceptive  
 34 acts and order restitution to be paid to aggrieved consumers.

35 (e) In any action under subsection (a) or (b), upon the filing of the  
 36 complaint or on the appearance of any defendant, claimant, or any  
 37 other party, or at any later time, the trial court, the supreme court, or the  
 38 court of appeals may require the plaintiff, defendant, claimant, or any  
 39 other party or parties to give security, or additional security, in such  
 40 sum as the court shall direct to pay all costs, expenses, and  
 41 disbursements that shall be awarded against that party or which that  
 42 party may be directed to pay by any interlocutory order by the final





1 judgment or on appeal.

2 (f) Any person who violates the terms of an injunction issued under  
3 subsection (c) shall forfeit and pay to the state a civil penalty of not  
4 more than fifteen thousand dollars (\$15,000) per violation. For the  
5 purposes of this section, the court issuing an injunction shall retain  
6 jurisdiction, the cause shall be continued, and the attorney general  
7 acting in the name of the state may petition for recovery of civil  
8 penalties. Whenever the court determines that an injunction issued  
9 under subsection (c) has been violated, the court shall award  
10 reasonable costs to the state.

11 (g) If a court finds any person has knowingly violated section 3 or  
12 10 of this chapter, other than section ~~3(a)(19)~~ **3(b)(19)** or ~~3(a)(20)~~  
13 **3(b)(20)** of this chapter, the attorney general, in an action pursuant to  
14 subsection (c), may recover from the person on behalf of the state a  
15 civil penalty of a fine not exceeding five thousand dollars (\$5,000) per  
16 violation.

17 (h) If a court finds that a person has violated section ~~3(a)(19)~~  
18 **3(b)(19)** of this chapter, the attorney general, in an action under  
19 subsection (c), may recover from the person on behalf of the state a  
20 civil penalty as follows:

21 (1) For a knowing or intentional violation, one thousand five  
22 hundred dollars (\$1,500).

23 (2) For a violation other than a knowing or intentional violation,  
24 five hundred dollars (\$500).

25 A civil penalty recovered under this subsection shall be deposited in  
26 the consumer protection division telephone solicitation fund  
27 established by IC 24-4.7-3-6 to be used for the administration and  
28 enforcement of section ~~3(a)(19)~~ **3(b)(19)** of this chapter.

29 (i) A senior consumer relying upon an uncured or incurable  
30 deceptive act, including an act related to hypnotism, may bring an  
31 action to recover treble damages, if appropriate.

32 (j) An offer to cure is:

33 (1) not admissible as evidence in a proceeding initiated under this  
34 section unless the offer to cure is delivered by a supplier to the  
35 consumer or a representative of the consumer before the supplier  
36 files the supplier's initial response to a complaint; and

37 (2) only admissible as evidence in a proceeding initiated under  
38 this section to prove that a supplier is not liable for attorney's fees  
39 under subsection (k).

40 If the offer to cure is timely delivered by the supplier, the supplier may  
41 submit the offer to cure as evidence to prove in the proceeding in  
42 accordance with the Indiana Rules of Trial Procedure that the supplier



1 made an offer to cure.

2 (k) A supplier may not be held liable for the attorney's fees and  
3 court costs of the consumer that are incurred following the timely  
4 delivery of an offer to cure as described in subsection (j) unless the  
5 actual damages awarded, not including attorney's fees and costs, exceed  
6 the value of the offer to cure.

7 (l) If a court finds that a person has knowingly violated section  
8 ~~3(a)(20)~~ **3(b)(20)** of this chapter, the attorney general, in an action  
9 under subsection (c), may recover from the person on behalf of the  
10 state a civil penalty not exceeding one thousand dollars (\$1,000) per  
11 consumer. In determining the amount of the civil penalty in any action  
12 by the attorney general under this subsection, the court shall consider,  
13 among other relevant factors, the frequency and persistence of  
14 noncompliance by the debt collector, the nature of the noncompliance,  
15 and the extent to which the noncompliance was intentional. A person  
16 may not be held liable in any action by the attorney general for a  
17 violation of section ~~3(a)(20)~~ **3(b)(20)** of this chapter if the person  
18 shows by a preponderance of evidence that the violation was not  
19 intentional and resulted from a bona fide error, notwithstanding the  
20 maintenance of procedures reasonably adapted to avoid the error. A  
21 person may not be held liable in any action for a violation of this  
22 chapter for contacting a person other than the debtor, if the contact is  
23 made in compliance with the Fair Debt Collection Practices Act.



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 394, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 12, delete lines 12 through 13.

and when so amended that said bill do pass.

(Reference is to SB 394 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 1.

