



January 28, 2015

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## SENATE BILL No. 211

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DIGEST OF SB 211 (Updated January 26, 2015 1:11 pm - DI 106)

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

**Synopsis:** Debt collection. Amends the statute concerning deceptive consumer sales as follows: (1) Defines the term "debt buyer". (2) Specifies that a debt buyer is a debt collector for purposes of the statute. (3) Requires a debt collector to make certain disclosures to an Indiana debtor. (4) Provides that the failure to make the required disclosures constitutes a deceptive act under the statute. (5) Specifies that the attorney general's authority to recover a civil penalty not exceeding \$1,000 for knowing violations of the provisions concerning debt collection practices applies to each violation of the provisions per consumer, subject to a cap of \$25,000 in total civil penalties that may be imposed for each violation.

**Effective:** July 1, 2015.

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### Miller Patricia, Buck

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January 6, 2015, read first time and referred to Committee on Civil Law.  
January 27, 2015, amended, reported favorably — Do Pass.

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SB 211—LS 6738/DI 101





January 28, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 211

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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 24-5-0.5-2, AS AMENDED BY P.L.65-2014,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]: Sec. 2. (a) As used in this chapter:  
4 (1) "Consumer transaction" means a sale, lease, assignment,  
5 award by chance, or other disposition of an item of personal  
6 property, real property, a service, or an intangible, except  
7 securities and policies or contracts of insurance issued by  
8 corporations authorized to transact an insurance business under  
9 the laws of the state of Indiana, with or without an extension of  
10 credit, to a person for purposes that are primarily personal,  
11 familial, charitable, agricultural, or household, or a solicitation to  
12 supply any of these things. However, the term includes the  
13 following:  
14 (A) A transfer of structured settlement payment rights under  
15 IC 34-50-2.  
16 (B) An unsolicited advertisement sent to a person by telephone

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- 1 facsimile machine offering a sale, lease, assignment, award by  
 2 chance, or other disposition of an item of personal property,  
 3 real property, a service, or an intangible.
- 4 (C) The collection of or attempt to collect a debt by a debt  
 5 collector.
- 6 (2) "Person" means an individual, corporation, the state of Indiana  
 7 or its subdivisions or agencies, business trust, estate, trust,  
 8 partnership, association, nonprofit corporation or organization, or  
 9 cooperative or any other legal entity.
- 10 (3) "Supplier" means the following:
- 11 (A) A seller, lessor, assignor, or other person who regularly  
 12 engages in or solicits consumer transactions, including  
 13 soliciting a consumer transaction by using a telephone  
 14 facsimile machine to transmit an unsolicited advertisement.  
 15 The term includes a manufacturer, wholesaler, or retailer,  
 16 whether or not the person deals directly with the consumer.
- 17 (B) A person who contrives, prepares, sets up, operates,  
 18 publicizes by means of advertisements, or promotes a pyramid  
 19 promotional scheme.
- 20 (C) A debt collector.
- 21 (4) "Subject of a consumer transaction" means the personal  
 22 property, real property, services, or intangibles offered or  
 23 furnished in a consumer transaction.
- 24 (5) "Cure" as applied to a deceptive act, means either:
- 25 (A) to offer in writing to adjust or modify the consumer  
 26 transaction to which the act relates to conform to the  
 27 reasonable expectations of the consumer generated by such  
 28 deceptive act and to perform such offer if accepted by the  
 29 consumer; or
- 30 (B) to offer in writing to rescind such consumer transaction  
 31 and to perform such offer if accepted by the consumer.
- 32 The term includes an offer in writing of one (1) or more items of  
 33 value, including monetary compensation, that the supplier  
 34 delivers to a consumer or a representative of the consumer if  
 35 accepted by the consumer.
- 36 (6) "Offer to cure" as applied to a deceptive act is a cure that:
- 37 (A) is reasonably calculated to remedy a loss claimed by the  
 38 consumer; and
- 39 (B) includes a minimum additional amount that is the greater  
 40 of:
- 41 (i) ten percent (10%) of the value of the remedy under  
 42 clause (A), but not more than four thousand dollars



- 1 (\$4,000); or  
 2 (ii) five hundred dollars (\$500);  
 3 as compensation for attorney's fees, expenses, and other costs  
 4 that a consumer may incur in relation to the deceptive act.  
 5 (7) "Uncured deceptive act" means a deceptive act:  
 6 (A) with respect to which a consumer who has been damaged  
 7 by such act has given notice to the supplier under section 5(a)  
 8 of this chapter; and  
 9 (B) either:  
 10 (i) no offer to cure has been made to such consumer within  
 11 thirty (30) days after such notice; or  
 12 (ii) the act has not been cured as to such consumer within a  
 13 reasonable time after the consumer's acceptance of the offer  
 14 to cure.  
 15 (8) "Incurable deceptive act" means a deceptive act done by a  
 16 supplier as part of a scheme, artifice, or device with intent to  
 17 defraud or mislead. The term includes a failure of a transferee of  
 18 structured settlement payment rights to timely provide a true and  
 19 complete disclosure statement to a payee as provided under  
 20 IC 34-50-2 in connection with a direct or indirect transfer of  
 21 structured settlement payment rights.  
 22 (9) "Pyramid promotional scheme" means any program utilizing  
 23 a pyramid or chain process by which a participant in the program  
 24 gives a valuable consideration exceeding one hundred dollars  
 25 (\$100) for the opportunity or right to receive compensation or  
 26 other things of value in return for inducing other persons to  
 27 become participants for the purpose of gaining new participants  
 28 in the program. The term does not include ordinary sales of goods  
 29 or services to persons who are not purchasing in order to  
 30 participate in such a scheme.  
 31 (10) "Promoting a pyramid promotional scheme" means:  
 32 (A) inducing or attempting to induce one (1) or more other  
 33 persons to become participants in a pyramid promotional  
 34 scheme; or  
 35 (B) assisting another in promoting a pyramid promotional  
 36 scheme.  
 37 (11) "Senior consumer" means an individual who is at least sixty  
 38 (60) years of age.  
 39 (12) "Telephone facsimile machine" means equipment that has  
 40 the capacity to transcribe text or images, or both, from:  
 41 (A) paper into an electronic signal and to transmit that signal  
 42 over a regular telephone line; or



- 1 (B) an electronic signal received over a regular telephone line  
 2 onto paper.
- 3 (13) "Unsolicited advertisement" means material advertising the  
 4 commercial availability or quality of:
- 5 (A) property;  
 6 (B) goods; or  
 7 (C) services;
- 8 that is transmitted to a person without the person's prior express  
 9 invitation or permission, in writing or otherwise.
- 10 (14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5).
- 11 (15) "Debt collector" has the meaning set forth in 15 U.S.C.  
 12 1692a(6). **The term includes a debt buyer.** The term does not  
 13 include a person admitted to the practice of law in Indiana if the  
 14 person is acting within the course and scope of the person's  
 15 practice as an attorney.
- 16 **(16) "Debt buyer" means a person that is engaged in the**  
 17 **business of purchasing:**
- 18 (A) delinquent or charged-off consumer loans;  
 19 (B) delinquent or charged-off consumer credit accounts; or  
 20 (C) other delinquent consumer debt;
- 21 **for collection purposes, whether the person collects the debt**  
 22 **itself or through an affiliate or a subsidiary. The term does**  
 23 **not include a person that collects or attempts to collect a debt**  
 24 **as an agent of the original creditor.**
- 25 **(17) "Charged off", with respect to a consumer loan or a**  
 26 **consumer credit account, means an accounting action taken**  
 27 **by the original creditor to remove a debt obligation from the**  
 28 **original creditor's financial statements by treating the debt**  
 29 **obligation as a loss or an expense.**
- 30 (b) As used in section 3(b)(15) and 3(b)(16) of this chapter:
- 31 (1) "Directory assistance" means the disclosure of telephone  
 32 number information in connection with an identified telephone  
 33 service subscriber by means of a live operator or automated  
 34 service.
- 35 (2) "Local telephone directory" refers to a telephone classified  
 36 advertising directory or the business section of a telephone  
 37 directory that is distributed by a telephone company or directory  
 38 publisher to subscribers located in the local exchanges contained  
 39 in the directory. The term includes a directory that includes  
 40 listings of more than one (1) telephone company.
- 41 (3) "Local telephone number" refers to a telephone number that  
 42 has the three (3) number prefix used by the provider of telephone



1 service for telephones physically located within the area covered  
 2 by the local telephone directory in which the number is listed. The  
 3 term does not include long distance numbers or 800-, 888-, or  
 4 900- exchange numbers listed in a local telephone directory.

5 SECTION 2. IC 24-5-0.5-3, AS AMENDED BY P.L.65-2014,  
 6 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2015]: Sec. 3. (a) A supplier may not commit an unfair,  
 8 abusive, or deceptive act, omission, or practice in connection with a  
 9 consumer transaction. Such an act, omission, or practice by a supplier  
 10 is a violation of this chapter whether it occurs before, during, or after  
 11 the transaction. An act, omission, or practice prohibited by this section  
 12 includes both implicit and explicit misrepresentations.

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

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

21 (2) That such subject of a consumer transaction is of a particular  
 22 standard, quality, grade, style, or model, if it is not and if the  
 23 supplier knows or should reasonably know that it is not.

24 (3) That such subject of a consumer transaction is new or unused,  
 25 if it is not and if the supplier knows or should reasonably know  
 26 that it is not.

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

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

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

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

40 (8) That such consumer transaction involves or does not involve  
 41 a warranty, a disclaimer of warranties, or other rights, remedies,  
 42 or obligations, if the representation is false and if the supplier



- 1 knows or should reasonably know that the representation is false.  
 2 (9) That the consumer will receive a rebate, discount, or other  
 3 benefit as an inducement for entering into a sale or lease in return  
 4 for giving the supplier the names of prospective consumers or  
 5 otherwise helping the supplier to enter into other consumer  
 6 transactions, if earning the benefit, rebate, or discount is  
 7 contingent upon the occurrence of an event subsequent to the time  
 8 the consumer agrees to the purchase or lease.  
 9 (10) That the supplier is able to deliver or complete the subject of  
 10 the consumer transaction within a stated period of time, when the  
 11 supplier knows or should reasonably know the supplier could not.  
 12 If no time period has been stated by the supplier, there is a  
 13 presumption that the supplier has represented that the supplier  
 14 will deliver or complete the subject of the consumer transaction  
 15 within a reasonable time, according to the course of dealing or the  
 16 usage of the trade.  
 17 (11) That the consumer will be able to purchase the subject of the  
 18 consumer transaction as advertised by the supplier, if the supplier  
 19 does not intend to sell it.  
 20 (12) That the replacement or repair constituting the subject of a  
 21 consumer transaction can be made by the supplier for the estimate  
 22 the supplier gives a customer for the replacement or repair, if the  
 23 specified work is completed and:  
 24 (A) the cost exceeds the estimate by an amount equal to or  
 25 greater than ten percent (10%) of the estimate;  
 26 (B) the supplier did not obtain written permission from the  
 27 customer to authorize the supplier to complete the work even  
 28 if the cost would exceed the amounts specified in clause (A);  
 29 (C) the total cost for services and parts for a single transaction  
 30 is more than seven hundred fifty dollars (\$750); and  
 31 (D) the supplier knew or reasonably should have known that  
 32 the cost would exceed the estimate in the amounts specified in  
 33 clause (A).  
 34 (13) That the replacement or repair constituting the subject of a  
 35 consumer transaction is needed, and that the supplier disposes of  
 36 the part repaired or replaced earlier than seventy-two (72) hours  
 37 after both:  
 38 (A) the customer has been notified that the work has been  
 39 completed; and  
 40 (B) the part repaired or replaced has been made available for  
 41 examination upon the request of the customer.  
 42 (14) Engaging in the replacement or repair of the subject of a





- 1 consumer transaction if the consumer has not authorized the  
 2 replacement or repair, and if the supplier knows or should  
 3 reasonably know that it is not authorized.
- 4 (15) The act of misrepresenting the geographic location of the  
 5 supplier by listing a fictitious business name or an assumed  
 6 business name (as described in IC 23-15-1) in a local telephone  
 7 directory if:
- 8 (A) the name misrepresents the supplier's geographic location;  
 9 (B) the listing fails to identify the locality and state of the  
 10 supplier's business;  
 11 (C) calls to the local telephone number are routinely forwarded  
 12 or otherwise transferred to a supplier's business location that  
 13 is outside the calling area covered by the local telephone  
 14 directory; and  
 15 (D) the supplier's business location is located in a county that  
 16 is not contiguous to a county in the calling area covered by the  
 17 local telephone directory.
- 18 (16) The act of listing a fictitious business name or assumed  
 19 business name (as described in IC 23-15-1) in a directory  
 20 assistance database if:
- 21 (A) the name misrepresents the supplier's geographic location;  
 22 (B) calls to the local telephone number are routinely forwarded  
 23 or otherwise transferred to a supplier's business location that  
 24 is outside the local calling area; and  
 25 (C) the supplier's business location is located in a county that  
 26 is not contiguous to a county in the local calling area.
- 27 (17) The violation by a supplier of IC 24-3-4 concerning  
 28 cigarettes for import or export.
- 29 (18) The act of a supplier in knowingly selling or reselling a  
 30 product to a consumer if the product has been recalled, whether  
 31 by the order of a court or a regulatory body, or voluntarily by the  
 32 manufacturer, distributor, or retailer, unless the product has been  
 33 repaired or modified to correct the defect that was the subject of  
 34 the recall.
- 35 (19) The violation by a supplier of 47 U.S.C. 227, including any  
 36 rules or regulations issued under 47 U.S.C. 227.
- 37 (20) **The following acts in connection with the collection of or**  
 38 **attempt to collect a debt:**
- 39 (A) The violation by a supplier of the federal Fair Debt  
 40 Collection Practices Act (15 U.S.C. 1692 et seq.), including  
 41 any rules or regulations issued under the federal Fair Debt  
 42 Collection Practices Act (15 U.S.C. 1692 et seq.).



1           **(B) The failure of a debt collector to do any of the**  
2 **following in connection with the debt collector's initial oral**  
3 **communication with a debtor who is an Indiana resident,**  
4 **upon the debt collector's verification that the debt collector**  
5 **is communicating with the debtor:**

6           **(i) Disclose during the initial oral communication with**  
7 **the debtor the debt collector's identity as a debt**  
8 **collector.**

9           **(ii) Provide during the initial oral communication with**  
10 **the debtor the information set forth in 15 U.S.C.**  
11 **1692g(a)(1)-(2). The debt collector shall, not later than**  
12 **five (5) days after the initial oral communication with the**  
13 **debtor, send the debtor a written notice containing the**  
14 **information set forth in 15 U.S.C. 1692g(a) and, as**  
15 **applicable, in items (iii), (iv), and (v), unless the debt**  
16 **collector has provided a written notice containing the**  
17 **information set forth in 15 U.S.C. 1692g(a) and, as**  
18 **applicable, in items (iii), (iv), and (v) (and concerning the**  
19 **same debt that is the subject of the initial oral**  
20 **communication) before the debt collector's initial oral**  
21 **communication with the debtor.**

22           **(iii) Disclose during the initial oral communication with**  
23 **the debtor the name of the original creditor.**

24           **(iv) If the debt has been sold or assigned to a debt**  
25 **collector, disclose during the initial oral communication**  
26 **with the debtor the date of the initial sale or assignment**  
27 **of the debt.**

28           **(v) For a debt that is initially sold or assigned after June**  
29 **30, 2015, provide to the debtor not later than five (5)**  
30 **days after the initial oral communication with the debtor**  
31 **a written itemized accounting of the debt, including the**  
32 **total amount of the debt due as of the date of the initial**  
33 **sale or assignment of the debt, the total amount of**  
34 **interest accrued following the date of the initial sale or**  
35 **assignment of the debt, the total amount of charges or**  
36 **fees (other than interest) accrued following the date of**  
37 **the initial sale or assignment of the debt, and the total**  
38 **amount of payments made on the debt following the date**  
39 **of the initial sale or assignment of the debt.**

40           **(vi) For purposes of items (iii), (iv), and (v), if the debt**  
41 **collector receives the debtor's verbal consent, instead of**  
42 **providing an oral disclosure, the debt collector may**



- 1           **satisfy the disclosure requirements by providing the**  
 2           **debtor with a password to have contemporaneous access**  
 3           **to the information via a secured web site, or by**  
 4           **providing the debtor with a contemporaneous electronic**  
 5           **mail message containing the information.**  
 6           **(C) The failure of a debt collector to, in connection with an**  
 7           **oral communication with a debtor who is an Indiana**  
 8           **resident, after verifying that the debt collector is**  
 9           **communicating with the debtor, provide the oral**  
 10           **communication in a manner that is reasonably designed to**  
 11           **be understood by the debtor and recognized as an attempt**  
 12           **to collect a debt.**  
 13           (21) A violation of IC 24-5-7 (concerning health spa services), as  
 14           set forth in IC 24-5-7-17.  
 15           (22) A violation of IC 24-5-8 (concerning business opportunity  
 16           transactions), as set forth in IC 24-5-8-20.  
 17           (23) A violation of IC 24-5-10 (concerning home consumer  
 18           transactions), as set forth in IC 24-5-10-18.  
 19           (24) A violation of IC 24-5-11 (concerning home improvement  
 20           contracts), as set forth in IC 24-5-11-14.  
 21           (25) A violation of IC 24-5-12 (concerning telephone  
 22           solicitations), as set forth in IC 24-5-12-23.  
 23           (26) A violation of IC 24-5-13.5 (concerning buyback motor  
 24           vehicles), as set forth in IC 24-5-13.5-14.  
 25           (27) A violation of IC 24-5-14 (concerning automatic  
 26           dialing-announcing devices), as set forth in IC 24-5-14-13.  
 27           (28) A violation of IC 24-5-15 (concerning credit services  
 28           organizations), as set forth in IC 24-5-15-11.  
 29           (29) A violation of IC 24-5-16 (concerning unlawful motor  
 30           vehicle subleasing), as set forth in IC 24-5-16-18.  
 31           (30) A violation of IC 24-5-17 (concerning environmental  
 32           marketing claims), as set forth in IC 24-5-17-14.  
 33           (31) A violation of IC 24-5-19 (concerning deceptive commercial  
 34           solicitation), as set forth in IC 24-5-19-11.  
 35           (32) A violation of IC 24-5-21 (concerning prescription drug  
 36           discount cards), as set forth in IC 24-5-21-7.  
 37           (33) A violation of IC 24-5-23.5-7 (concerning real estate  
 38           appraisals), as set forth in IC 24-5-23.5-9.  
 39           (34) A violation of IC 24-5-26 (concerning identity theft), as set  
 40           forth in IC 24-5-26-3.  
 41           (35) A violation of IC 24-5-5 (concerning mortgage rescue fraud),  
 42           as set forth in IC 24-5-5-6-1.



1 (36) A violation of IC 24-8 (concerning promotional gifts and  
 2 contests), as set forth in IC 24-8-6-3.  
 3 (37) A violation of IC 21-18.5-6 (concerning representations  
 4 made by a postsecondary credit bearing proprietary educational  
 5 institution), as set forth in IC 21-18.5-6-22.5.  
 6 (c) Any representations on or within a product or its packaging or  
 7 in advertising or promotional materials which would constitute a  
 8 deceptive act shall be the deceptive act both of the supplier who places  
 9 such representation thereon or therein, or who authored such materials,  
 10 and such other suppliers who shall state orally or in writing that such  
 11 representation is true if such other supplier shall know or have reason  
 12 to know that such representation was false.  
 13 (d) If a supplier shows by a preponderance of the evidence that an  
 14 act resulted from a bona fide error notwithstanding the maintenance of  
 15 procedures reasonably adopted to avoid the error, such act shall not be  
 16 deceptive within the meaning of this chapter.  
 17 (e) It shall be a defense to any action brought under this chapter that  
 18 the representation constituting an alleged deceptive act was one made  
 19 in good faith by the supplier without knowledge of its falsity and in  
 20 reliance upon the oral or written representations of the manufacturer,  
 21 the person from whom the supplier acquired the product, any testing  
 22 organization, or any other person provided that the source thereof is  
 23 disclosed to the consumer.  
 24 (f) For purposes of subsection (b)(12), a supplier that provides  
 25 estimates before performing repair or replacement work for a customer  
 26 shall give the customer a written estimate itemizing as closely as  
 27 possible the price for labor and parts necessary for the specific job  
 28 before commencing the work.  
 29 (g) For purposes of subsection (b)(15) and (b)(16), a telephone  
 30 company or other provider of a telephone directory or directory  
 31 assistance service or its officer or agent is immune from liability for  
 32 publishing the listing of a fictitious business name or assumed business  
 33 name of a supplier in its directory or directory assistance ~~database data~~  
 34 **base** unless the telephone company or other provider of a telephone  
 35 directory or directory assistance service is the same person as the  
 36 supplier who has committed the deceptive act.  
 37 (h) For purposes of subsection (b)(18), it is an affirmative defense  
 38 to any action brought under this chapter that the product has been  
 39 altered by a person other than the defendant to render the product  
 40 completely incapable of serving its original purpose.  
 41 SECTION 3. IC 24-5-0.5-4, AS AMENDED BY P.L.65-2014,  
 42 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2015]: Sec. 4. (a) A person relying upon an uncured or  
 2 incurable deceptive act may bring an action for the damages actually  
 3 suffered as a consumer as a result of the deceptive act or five hundred  
 4 dollars (\$500), whichever is greater. The court may increase damages  
 5 for a willful deceptive act in an amount that does not exceed the greater  
 6 of:

7 (1) three (3) times the actual damages of the consumer suffering  
 8 the loss; or

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

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

22 (b) Any person who is entitled to bring an action under subsection  
 23 (a) on the person's own behalf against a supplier for damages for a  
 24 deceptive act may bring a class action against such supplier on behalf  
 25 of any class of persons of which that person is a member and which has  
 26 been damaged by such deceptive act, subject to and under the Indiana  
 27 Rules of Trial Procedure governing class actions, except as herein  
 28 expressly provided. Except as provided in subsection (j), the court may  
 29 award reasonable attorney fees to the party that prevails in a class  
 30 action under this subsection, provided that such fee shall be determined  
 31 by the amount of time reasonably expended by the attorney and not by  
 32 the amount of the judgment, although the contingency of the fee may  
 33 be considered. Except in the case of an extension of time granted by the  
 34 attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10,  
 35 any money or other property recovered in a class action under this  
 36 subsection which cannot, with due diligence, be restored to consumers  
 37 within one (1) year after the judgment becomes final shall be returned  
 38 to the party depositing the same. This subsection does not apply to a  
 39 consumer transaction in real property, except for purchases of time  
 40 shares and camping club memberships. This subsection does not apply  
 41 with respect to a deceptive act described in section 3(b)(20) of this  
 42 chapter. Actual damages awarded to a class have priority over any civil



1 penalty imposed under this chapter.

2 (c) The attorney general may bring an action to enjoin a deceptive  
3 act, including a deceptive act described in section 3(b)(20) of this  
4 chapter, notwithstanding subsections (a) and (b). However, the attorney  
5 general may seek to enjoin patterns of incurable deceptive acts with  
6 respect to consumer transactions in real property. In addition, the court  
7 may:

8 (1) issue an injunction;

9 (2) order the supplier to make payment of the money unlawfully  
10 received from the aggrieved consumers to be held in escrow for  
11 distribution to aggrieved consumers;

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

16 (4) order the supplier to pay to the state the reasonable costs of  
17 the attorney general's investigation and prosecution related to the  
18 action;

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

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

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

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

38 (f) Any person who violates the terms of an injunction issued under  
39 subsection (c) shall forfeit and pay to the state a civil penalty of not  
40 more than fifteen thousand dollars (\$15,000) per violation. For the  
41 purposes of this section, the court issuing an injunction shall retain  
42 jurisdiction, the cause shall be continued, and the attorney general



1 acting in the name of the state may petition for recovery of civil  
 2 penalties. Whenever the court determines that an injunction issued  
 3 under subsection (c) has been violated, the court shall award  
 4 reasonable costs to the state.

5 (g) If a court finds any person has knowingly violated section 3 or  
 6 10 of this chapter, other than section 3(b)(19) or 3(b)(20) of this  
 7 chapter, the attorney general, in an action pursuant to subsection (c),  
 8 may recover from the person on behalf of the state a civil penalty of a  
 9 fine not exceeding five thousand dollars (\$5,000) per violation.

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

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

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

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

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

24 (j) An offer to cure is:

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

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

32 If the offer to cure is timely delivered by the supplier, the supplier may  
 33 submit the offer to cure as evidence to prove in the proceeding in  
 34 accordance with the Indiana Rules of Trial Procedure that the supplier  
 35 made an offer to cure.

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

41 (l) If a court finds that a person has knowingly violated section  
 42 3(b)(20) of this chapter, the attorney general, in an action under



1 subsection (c), may recover from the person on behalf of the state a  
2 civil penalty not exceeding one thousand dollars (\$1,000) per consumer  
3 **for each violation of section 3(b)(20) of this chapter. However, the**  
4 **total amount of civil penalties imposed for each violation of section**  
5 **3(b)(20) of this chapter may not exceed twenty-five thousand**  
6 **dollars (\$25,000).** In determining the amount of the civil penalty in any  
7 action by the attorney general under this subsection, the court shall  
8 consider, among other relevant factors, the frequency and persistence  
9 of noncompliance by the debt collector, the nature of the  
10 noncompliance, and the extent to which the noncompliance was  
11 intentional. A person may not be held liable in any action by the  
12 attorney general for a violation of section 3(b)(20) of this chapter if the  
13 person shows by a preponderance of evidence that the violation was not  
14 intentional and resulted from a bona fide error, notwithstanding the  
15 maintenance of procedures reasonably ~~adapted~~ **adopted** to avoid the  
16 error. A person may not be held liable in any action for a violation of  
17 this chapter for contacting a person other than the debtor, if the contact  
18 is 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. 211, 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 8, line 15, delete "(vi)," and insert "(v),".

Page 8, line 18, delete "(vi)" and insert "(v)".

Page 8, line 22, delete "If the debt collector is a debt buyer, disclose" and insert "**Disclose**".

Page 8, delete lines 25 through 31, begin a new line triple block indented and insert:

**"(iv) If the debt has been sold or assigned to a debt collector, disclose during the initial oral communication with the debtor the date of the initial sale or assignment of the debt."**

Page 8, line 32, delete "(vi)" and insert "(v)".

Page 8, line 32, delete "charged off" and insert "**initially sold or assigned**".

Page 8, line 36, delete "charge-off date," and insert "**date of the initial sale or assignment of the debt,**".

Page 8, line 37, delete "charge-off" and insert "**date of the initial sale or assignment of the debt,**".

Page 8, line 38, delete "date,".

Page 8, line 39, delete "charge-off date," and insert "**date of the initial sale or assignment of the debt,**".

Page 8, delete line 41 and insert "**date of the initial sale or assignment of the debt.**

**(vi) For purposes of items (iii), (iv), and (v), if the debt collector receives the debtor's verbal consent, instead of providing an oral disclosure, the debt collector may satisfy the disclosure requirements by providing the debtor with a password to have contemporaneous access to the information via a secured web site, or by providing the debtor with a contemporaneous electronic mail message containing the information."**

Page 8, line 42, delete "to do any of the" and insert "**to, in connection with an oral communication with a debtor who is an Indiana resident, after verifying that the debt collector is communicating with the debtor, provide the oral communication in a manner that is reasonably designed to be understood by the debtor and recognized as an attempt to collect a debt."**



Page 9, delete lines 1 through 13.  
and when so amended that said bill do pass.  
(Reference is to SB 211 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 0.

