

# HOUSE BILL No. 1804

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5-0.5-3.

**Synopsis:** Truth in price advertising. Requires that advertised prices must include all typical fees, charges, and upgrades required to consummate a transaction.

**Effective:** July 1, 2003.

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### Alderman

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January 23, 2003, read first time and referred to Committee on Commerce and Economic Development.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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## HOUSE BILL No. 1804



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

*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.70-2002,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2003]: Sec. 3. (a) The following acts or representations as to
- 4 the subject matter of a consumer transaction, made either orally or in
- 5 writing by a supplier, are deceptive acts:
- 6 (1) That such subject of a consumer transaction has sponsorship,
- 7 approval, performance, characteristics, accessories, uses, or
- 8 benefits it does not have which the supplier knows or should
- 9 reasonably know it does not have.
- 10 (2) That such subject of a consumer transaction is of a particular
- 11 standard, quality, grade, style, or model, if it is not and if the
- 12 supplier knows or should reasonably know that it is not.
- 13 (3) That such subject of a consumer transaction is new or unused,
- 14 if it is not and if the supplier knows or should reasonably know
- 15 that it is not.
- 16 (4) That such subject of a consumer transaction will be supplied
- 17 to the public in greater quantity than the supplier intends or



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

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

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1 consumer if the product has been recalled, whether by the order  
 2 of a court or a regulatory body, or voluntarily by the  
 3 manufacturer, distributor, or retailer unless the product has been  
 4 repaired or modified to correct the defect that was the subject of  
 5 the recall.

6 **(19) That additional:**

7 **(A) fees;**

8 **(B) charges; or**

9 **(C) customer upgrades;**

10 **typically required to consummate a consumer transaction are**  
 11 **knowingly excluded from the advertised price.**

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), a telephone company or other  
 36 provider of a telephone directory or directory assistance service or its  
 37 officer or agent is immune from liability for publishing the listing of a  
 38 fictitious business name or assumed business name of a supplier in its  
 39 directory or directory assistance database unless the telephone  
 40 company or other provider of a telephone directory or directory  
 41 assistance service is the same person as the supplier who has  
 42 committed the deceptive act.

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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.

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