



February 15, 2005

HOUSE BILL No. 1501

DIGEST OF HB 1501 (Updated February 7, 2005 5:21 pm - DI 107)

Citations Affected: IC 24-5; IC 24-8.

Synopsis: Deceptive acts and attorney general's office. Increases the amount of the civil penalty that the attorney general may recover for a violation of the deceptive consumer sales law. Authorizes the court to provide for the appointment of a receiver in an action brought by the attorney general to enjoin a deceptive act. Provides that the law regulating promotional gifts and contests applies to a notice of a promotion that is delivered by electronic mail or another form of electronic communication.

Effective: July 1, 2005.

Yount, Thomas, Kuzman, Woodruff

January 18, 2005, read first time and referred to Committee on Judiciary.
February 14, 2005, reported — Do Pass.

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HB 1501—LS 7506/DI 69+



February 15, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1501

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 24-5-0.5-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person relying
3 upon an uncured or incurable deceptive act may bring an action for the
4 damages actually suffered as a consumer as a result of the deceptive
5 act. The court may award reasonable attorney fees to the party that
6 prevails in an action under this subsection. This subsection does not
7 apply to a consumer transaction in real property, except for purchases
8 of time shares and camping club memberships. Actual damages
9 awarded to a person under this section have priority over any civil
10 penalty imposed under this chapter.

11 (b) Any person who is entitled to bring an action under subsection
12 (a) on the person's own behalf against a supplier for damages for a
13 deceptive act may bring a class action against such supplier on behalf
14 of any class of persons of which that person is a member and which has
15 been damaged by such deceptive act, subject to and under the Indiana
16 Rules of Trial Procedure governing class actions, except as herein
17 expressly provided. The court may award reasonable attorney fees to

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1 the party that prevails in a class action under this subsection, provided
 2 that such fee shall be determined by the amount of time reasonably
 3 expended by the attorney and not by the amount of the judgment,
 4 although the contingency of the fee may be considered. Any money or
 5 other property recovered in a class action under this subsection which
 6 cannot, with due diligence, be restored to consumers within one (1)
 7 year after the judgment becomes final shall be returned to the party
 8 depositing the same. This subsection does not apply to a consumer
 9 transaction in real property, except for purchases of time shares and
 10 camping club memberships. Actual damages awarded to a class have
 11 priority over any civil penalty imposed under this chapter.

12 (c) The attorney general may bring an action to enjoin a deceptive
 13 act. However, the attorney general may seek to enjoin patterns of
 14 incurable deceptive acts with respect to consumer transactions in real
 15 property. In addition, the court may:

- 16 (1) issue an injunction;
- 17 (2) order the supplier to make payment of the money unlawfully
 18 received from the aggrieved consumers to be held in escrow for
 19 distribution to aggrieved consumers; ~~and~~
- 20 (3) order the supplier to pay to the state the reasonable costs of
 21 the attorney general's investigation and prosecution related to the
 22 action; **and**

23 **(4) provide for the appointment of a receiver.**

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

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

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

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1 under subsection (c) has been violated, the court shall award
2 reasonable costs to the state.

3 (g) If a court finds any person has knowingly violated section 3 or
4 10 of this chapter, the attorney general, in an action pursuant to
5 subsection (c), may recover from the person on behalf of the state a
6 civil penalty of a fine not exceeding five ~~hundred thousand~~ dollars
7 ~~(~~\$500~~) (\$5,000)~~ per violation.

8 (h) An elderly person relying upon an uncured or incurable
9 deceptive act, including an act related to hypnotism, may bring an
10 action to recover treble damages, if appropriate.

11 SECTION 2. IC 24-8-3-1 IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2005]: Sec. 1. Notice may be delivered by any
13 of the following methods:

- 14 (1) Hand.
- 15 (2) Mail.
- 16 (3) Newspaper.
- 17 (4) Other periodical.
- 18 **(5) Electronic mail or any other form of electronic, digital, or**
- 19 **Internet based communication.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1501, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

THOMAS, Chair

Committee Vote: yeas 11, nays 0.

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