HOUSE BILL No. 1607

DIGEST OF INTRODUCED BILL

Citations Affected: IC 15-2.1; IC 24-5-0.5.

Synopsis: Pet dealers. Provides for the regulation of pet dealers that the state board of animal health (board). Creates the pet dealer fund, and gives the board the authority to set fees related to the licensure of pet dealers. Continually appropriates money in the fund. Establishes guidelines for the regulation of the sale of dogs. Makes it a deceptive sales practice for a pet dealer to sell a dog if the pet dealer has not followed the procedures established by the board. Gives the board and the division of consumer protection of the office of the attorney general authority to oversee the sale of dogs.

Effective: July 1, 2007.

Van Haaften

January 23, 2007, read first time and referred to Committee on Agriculture and Rural Development.

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Introduced

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1607

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals and to make an appropriation.

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

SECTION 1. IC 15-2.1-25 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 25. Regulation of Pet Dealers

Sec. 1. As used in this chapter, "consumer" means a person purchasing a dog.

Sec. 2. As used in this chapter, "division" refers to the division of consumer protection in the office of the attorney general created by IC 4-6-9-1.

Sec. 3. As used in this chapter, "fund" refers to the pet dealer fund established by section 9 of this chapter.

Sec. 4. As used in this chapter, "pet dealer" means any person, or the employee of a person, who:

(1) engages in the sale of dogs to the public for profit; or

(2) sells or offers for sale more than five (5) dogs in one (1) year.

Sec. 5. As used in this chapter, "quarantine" means to hold in segregation from the general population any dog because of the presence or suspected presence of a contagious or infectious disease.

Sec. 6. As used in this chapter, "unfit for purchase" refers to an a dog with any:

(1) disease;
(2) deformity;
(3) injury;
(4) physical condition;
(5) illness; or
(6) defect;

that is congenital or hereditary and affects the health of the dog, or that manifest, capable of diagnosis, or likely contracted on or before the sale and delivery of the dog to the consumer. The death of a dog within fourteen (14) days after the delivery of the dog to the consumer, except for death by accident or as a result of injuries sustained during that period, means that the dog was unfit for purchase.

Sec. 7. As used in this chapter, "veterinarian" means a veterinarian licensed to practice in Indiana under IC 15-5-1.1.

Sec. 8. (a) The board shall adopt rules under IC 4-22-2 to regulate pet dealers concerning the sale of dogs.

(b) The board may set fees by rules adopted under IC 4-22-2 to cover the cost of implementing this chapter.

Sec. 9. (a) The pet dealer fund is established. The fund consists of:

(1) fees received under this chapter;
(2) fines and settlements under this chapter; and
(3) appropriations made by the general assembly.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund is continually appropriated to the board for use in administering this chapter.

Sec. 10. (a) Each cage used by a pet dealer must have affixed to it a label that:

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(1) identifies the sex and breed of each dog kept in the cage;
(2) states the date and place of birth of each dog kept in the cage;
(3) states the name and address of the veterinarian attending to each dog kept in the cage; and
(4) states the date on which the veterinarian identified under subdivision (3) initially examined each dog kept in the cage.

(b) No pet dealer, other than a pet dealer who is a veterinarian, may represent that the pet dealer is qualified to:
(1) diagnose;
(2) make a prognosis of;
(3) treat;
(4) administer medication or treatment for; or
(5) manipulate or apply any apparatus or appliance to address;
any disease, pain, deformity, defect, injury, wound or physical condition of a dog after the dog is sold to a consumer.

(c) A pet dealer, other than a pet dealer who is a veterinarian, shall not do any of the following:
(1) Inoculate or vaccinate a dog before the dog is sold to a consumer, except upon the order of a veterinarian.
(2) Inoculate or vaccinate a dog after the dog is sold to a consumer.
(3) Diagnose, make a prognosis of, treat, administer medication or treatment, manipulate, or apply any apparatus or appliance to address any disease, pain, deformity, defect, injury, wound or physical condition of a dog after the dog is sold to a consumer.

Sec. 11. The following apply to the sale of a dog by a pet dealer to a consumer:
(1) Five (5) days before offering a dog for sale, a pet dealer must have the dog examined by a veterinarian. The:
(A) name and address of the examining veterinarian;
(B) findings made; and
(C) treatment, if any, ordered as a result of the examination;
shall be noted on the animal history and health certificate for each dog as required by rules adopted by the board under IC 4-22-2.
(2) A pet dealer:
(A) shall quarantine any dog diagnosed as suffering from a contagious or infectious disease, illness, or condition; and

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(B) may not sell the dog until a veterinarian treats the dog and determines that the dog is free of clinical signs of infectious disease or that the dog is fit for sale.

(3) The division shall provide each pet dealer with notification forms to be signed by the pet dealer and the consumer at the time of the sale of a dog to a consumer. The notification form must include the following:

(A) The full text of this section, including the provisions establishing the rights and responsibilities of pet dealers and consumers and the notification, reporting, and enforcement provisions.

(B) A description of the recourse to which the consumer is entitled under this section.

(C) A statement that it is the responsibility of the consumer to obtain certification concerning the health of the dog within the time allowed by subdivisions (6) and (7).

(4) The pet dealer must:

(A) obtain the signature of the consumer purchasing a dog on the form described in subdivision (3);

(B) sign the form at the time of the consumer's purchase of the dog; and

(C) provide the consumer with a signed copy of the form and retain a copy of the form on the premises of the pet dealer.

Copies of all forms retained under this subdivision shall be kept readily available for inspection by an authorized representative of the division.

(5) Unless the consumer has waived the right to a reexamination in writing, within seventy-two (72) hours after the dog sold by a pet dealer is delivered to the consumer, the pet dealer must have a veterinarian examine the dog if the dog was last examined by a veterinarian more than fourteen (14) days before the date of the sale. The reexamination under this subdivision must be made to determine the animal's condition. A written waiver signed by a consumer is not effective under this subdivision unless the pet dealer provided the written waiver form to the consumer before the signing of any contact or agreement for the sale of a dog and the written waiver is on a form adopted by the division in rules adopted under IC 4-22-2.

(6) If at any time within fourteen (14) days after the sale and delivery of a dog to a consumer:

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(A) the dog becomes sick or dies; and
(B) a veterinarian certifies:
(i) that the animal was unfit for purchase due to a noncongenital cause or condition; or
(ii) that the animal died from causes other than an accident;
the consumer is entitled to the recourse provided in this section.
(7) If:
(A) a dog becomes sick or dies within one hundred eighty (180) days after a pet dealer sold the dog to the consumer; and
(B) a veterinarian certifies that the dog was unfit for sale due to:
(i) a congenital or hereditary cause or condition;
(ii) a sickness brought on by a congenital or hereditary cause or condition; or
(iii) a terminal cause or condition or sickness;
the consumer is entitled to the recourse provided in this section.
(8) It is the responsibility of the consumer to obtain a certification under subdivision (6) or (7) within the time allowed by subdivision (6) or (7) unless the pet dealer fails to provide the consumer the notification form required under subdivision (3). If the pet dealer fails to provide the required notification form, the consumer is entitled to the recourse provided in this section regardless of when the consumer obtains the certification.
(9) The consumer has the sole authority to determine the form of recourse the consumer selects under this section, provided that the recourse selected is one (1) of the following:
(A) The right to return the dog and receive:
(i) a full refund of the purchase price;
(ii) a full refund of any taxes paid under IC 6-2.5; and
(iii) reimbursement for the veterinary fees, including the cost of the veterinarian certification, incurred before the consumer received the veterinarian certification.
(B) The right to retain the dog and to receive reimbursement for:
(i) veterinary fees incurred before the consumer's receipt of the veterinarian certification; and
(ii) future cost of veterinary fees to be incurred in curing

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or attempting to cure the dog, including the cost of the veterinarian certification.

(C) The right to return the dog and receive:

(i) in exchange a dog of the consumer's choice, of equivalent value; and

(ii) reimbursement of veterinary fees, including the cost of the veterinarian certification, incurred before the consumer's receipt of the veterinarian certification.

(D) In the event of the death of the dog from causes other than an accident, the right to receive:

(i) a full refund of the purchase price of the dog, including any taxes; or

(ii) another dog of the consumer's choice of equivalent value;

and reimbursement of veterinary fees, including the cost of the veterinarian certification, incurred before the death of the dog.

(E) The right to be reimbursed in an amount for veterinary fees up to and including two (2) times the purchase price, including any taxes, of the sick or dead dog. Reimbursement of veterinary fees may not exceed two (2) times the purchase price, including sales tax, of the sick or dead animal.

(10) A veterinarian who examines a dog for purposes of certification under subdivision (6) or (7) shall provide to the consumer in writing within seven (7) days after the consumer consults with the veterinarian the following information:

(A) The name of the previous owner of the dog, if the previous owner was not the pet dealer and the identity of the previous owner is known to the veterinarian.

(B) The date or dates of examination of the dog.

(C) The breed, color, sex, and age of the dog.

(D) A statement of the findings of the veterinarian.

(E) A statement that the veterinarian certifies the dog to be "unfit for purchase", if that is the veterinarian's finding.

(F) An itemized statement of veterinary fees incurred as of the date of certification.

(G) If the dog is curable, an estimate of the possible cost to cure, or attempt to cure, the dog.

(H) If the dog has died, a statement establishing the probable cause of death.

(I) The name and address of the certifying veterinarian

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and the date of the certification.

(11) Upon the presentation of a veterinarian certification under subdivision (6) or (7) to the pet dealer, the consumer shall select the recourse to be provided under this section. The pet dealer shall confirm the consumer's selection of recourse in writing. The confirmation of the selection shall be signed by the pet dealer and the consumer, and a copy of the signed confirmation shall be given to the consumer and retained by the pet dealer on the premises of the pet dealer. The confirmation of the selection shall be in the form established by rules adopted by the division under IC 4-22-2.

(12) The pet dealer shall comply with the selection of recourse by the consumer not later than ten (10) days after the receipt of the veterinarian certification and the signed confirmation of selection of recourse form. If the pet dealer wishes to contest the selection of recourse of the consumer, the pet dealer shall notify the consumer, the division, and the board in writing within five (5) days after the receipt of the veterinarian certification and the signed confirmation of selection of recourse form. After notification to the consumer, the division, and the board, the pet dealer may require the consumer to produce the dog or the dog's body for examination by a veterinarian chosen by the pet dealer at a mutually convenient time and place unless the dog has died and was required to be cremated for public health reasons.

(13) A pet dealer is responsible and liable for any recourse or reimbursement due a consumer because of:

(A) violations of any provisions of this chapter by the pet dealer; or

(B) any document signed under this section by the pet dealer.

Sec. 12. (a) A consumer who purchases from a pet dealer a dog that becomes sick or dies after the purchase may take the sick or dead dog to a veterinarian within the period of time allowed under the notification form provided under section 11(1) of this chapter upon the date of purchase, receive certification from the veterinarian of the health and condition of the dog, and pursue the recourse provided for under the circumstances indicated by the veterinarian certification.

(b) Upon receipt of the certification from the veterinarian, the consumer may report the sickness or death of the dog and the name of the pet dealer from whom the dog was purchased to the

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division and the board. The consumer shall provide a copy of the veterinarian certificate with any report. The division and the board shall record and retain the records of any report and documentation submitted by a consumer.

(c) Not later than May 1 of each year, the board shall review any files it has concerning reports filed under subsection (b) and take appropriate action concerning the license of the pet dealer under rules adopted under IC 4-22-2.

Sec. 13. A pet dealer shall post the requirements of this chapter in a prominent place on the premises of the pet dealer along with the name, address, and telephone number of the division and the board. A pet dealer shall also provide this information in writing to each consumer at the time of purchase of a dog and to each licensed veterinarian contracted for services by the pet dealer upon contracting the veterinarian.

Sec. 14. The:

(1) board;

(2) division; or

(3) board and division jointly;

may investigate and pursue enforcement against any pet dealer reported by a consumer to have violated this chapter.

SECTION 2. IC 24-5-0.5-2, AS AMENDED BY P.L.85-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of **an animal (as defined in IC 15-2.1-25-1),** an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

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

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

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust,

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partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

The term includes an offer in writing of one (1) or more items of value, including monetary compensation, that the supplier delivers to a consumer or a representative of the consumer if accepted by the consumer.

(6) "Offer to cure" as applied to a deceptive act is a cure that:

(A) is reasonably calculated to remedy a loss claimed by the consumer; and

(B) includes a minimum additional amount that is the greater of:

(i) ten percent (10%) of the value of the remedy under clause (A), but not more than four thousand dollars ($4,000); or

(ii) five hundred dollars ($500);

as compensation for attorney's fees, expenses, and other costs that a consumer may incur in relation to the deceptive act.

(7) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

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(B) either:
(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or
(ii) the act has not been cured as to such consumer within a reasonable time after the consumer's acceptance of the offer to cure.

(8) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars ($100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:
(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or
(B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:
(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or
(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:
(A) property;
(B) goods; or
(C) services;
that is transmitted to a person without the person's prior express

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invitation or permission, in writing or otherwise.

(b) As used in section 3(a)(15) of this chapter:

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

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

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

SECTION 3. IC 24-5-0.5-3, AS AMENDED BY P.L.85-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The following acts or representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

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

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

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

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

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

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

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

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars ($750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of

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the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.

(18) That a supplier knowingly sells or resells a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) That the supplier violated 47 U.S.C. 227, including any rules

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or regulations issued under 47 U.S.C. 227.

(20) That a seller knowingly sells or resells an animal, as defined in IC 15-2.1-25-1, to a consumer if the seller has not met the requirements of IC 15-2.1-25.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

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

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