



April 13, 2011

**ENGROSSED
HOUSE BILL No. 1182**

DIGEST OF HB 1182 (Updated April 11, 2011 2:42 pm - DI 113)

Citations Affected: IC 24-5; IC 24-10.

Synopsis: Consumer protection assistance fund. Establishes the consumer protection assistance fund (fund) to be administered by the office of the attorney general (office). Provides that money in the fund may be used to make payments to qualifying individuals who: (1) are awarded restitution by a court in a case instituted or maintained by the office in connection with a violation of certain specified consumer protection statutes; and (2) assist or otherwise cooperate with the office in the investigation, prosecution, or enforcement of the case. Provides that the office may not make a payment to a qualifying individual unless the party ordered to pay restitution to the qualifying individual has not paid the full amount ordered by the court. Provides that upon
(Continued next page)

Effective: Upon passage.

**Burton, Bardon, Frye R, Riecken,
Speedy**

(SENATE SPONSORS — BRAY, LANANE, BANKS)

January 10, 2011, read first time and referred to Committee on Judiciary.
January 24, 2011, reported — Do Pass.
January 31, 2011, recommitted to Committee on Ways and Means.
February 14, 2011, amended, reported — Do Pass.
February 17, 2011, read second time, ordered engrossed. Engrossed.
February 21, 2011, read third time, passed. Yeas 99, nays 0.

SENATE ACTION

February 22, 2011, read first time and referred to Committee on Commerce and Economic Development.
April 12, 2011, amended, reported favorably — Do Pass.

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receiving a qualifying claim, the office shall pay, from money available in the fund, to each qualifying individual identified in the claim an amount that: (1) is determined at the discretion of the office; (2) may be up to the amount of the restitution awarded to the qualifying individual but not paid by the party ordered to pay the restitution; and (3) may not exceed \$3,000. Provides that a qualifying individual is not prohibited from seeking to recover, in any action or through any other lawful remedy available, any amount of the restitution that is awarded by the court and exceeds the amount paid to the individual by the office.

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April 13, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED HOUSE BILL No. 1182



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, AS AMENDED BY P.L.85-2006,
 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 4. (a) A person relying upon an uncured or
 4 incurable deceptive act may bring an action for the damages actually
 5 suffered as a consumer as a result of the deceptive act or five hundred
 6 dollars (\$500), whichever is greater. The court may increase damages
 7 for a willful deceptive act in an amount that does not exceed the greater
 8 of:

- 9 (1) three (3) times the actual damages of the consumer suffering
- 10 the loss; or
- 11 (2) one thousand dollars (\$1,000).

12 Except as provided in subsection (j), the court may award reasonable
 13 attorney fees to the party that prevails in an action under this
 14 subsection. This subsection does not apply to a consumer transaction
 15 in real property, including a claim or action involving a construction
 16 defect (as defined in IC 32-27-3-1(5)) brought against a construction
 17 professional (as defined in IC 32-27-3-1(4)), except for purchases of

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1 time shares and camping club memberships. This subsection also does
2 not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual
3 damages awarded to a person under this section have priority over any
4 civil penalty imposed under this chapter.

5 (b) Any person who is entitled to bring an action under subsection
6 (a) on the person's own behalf against a supplier for damages for a
7 deceptive act may bring a class action against such supplier on behalf
8 of any class of persons of which that person is a member and which has
9 been damaged by such deceptive act, subject to and under the Indiana
10 Rules of Trial Procedure governing class actions, except as herein
11 expressly provided. Except as provided in subsection (j), the court may
12 award reasonable attorney fees to the party that prevails in a class
13 action under this subsection, provided that such fee shall be determined
14 by the amount of time reasonably expended by the attorney and not by
15 the amount of the judgment, although the contingency of the fee may
16 be considered. **Except in the case of an extension of time granted by
17 the attorney general under IC 24-10-2-2(b) in an action subject to
18 IC 24-10**, any money or other property recovered in a class action
19 under this subsection which cannot, with due diligence, be restored to
20 consumers within one (1) year after the judgment becomes final shall
21 be returned to the party depositing the same. This subsection does not
22 apply to a consumer transaction in real property, except for purchases
23 of time shares and camping club memberships. Actual damages
24 awarded to a class have priority over any civil penalty imposed under
25 this chapter.

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

- 30 (1) issue an injunction;
- 31 (2) order the supplier to make payment of the money unlawfully
- 32 received from the aggrieved consumers to be held in escrow for
- 33 distribution to aggrieved consumers;
- 34 (3) order the supplier to pay to the state the reasonable costs of
- 35 the attorney general's investigation and prosecution related to the
- 36 action; and
- 37 (4) provide for the appointment of a receiver.

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

41 (e) In any action under subsection (a) or (b), upon the filing of the
42 complaint or on the appearance of any defendant, claimant, or any

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1 other party, or at any later time, the trial court, the supreme court, or the
2 court of appeals may require the plaintiff, defendant, claimant, or any
3 other party or parties to give security, or additional security, in such
4 sum as the court shall direct to pay all costs, expenses, and
5 disbursements that shall be awarded against that party or which that
6 party may be directed to pay by any interlocutory order by the final
7 judgment or on appeal.

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

17 (g) If a court finds any person has knowingly violated section 3 or
18 10 of this chapter, other than section 3(a)(19) of this chapter, the
19 attorney general, in an action pursuant to subsection (c), may recover
20 from the person on behalf of the state a civil penalty of a fine not
21 exceeding five thousand dollars (\$5,000) per violation.

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

- 25 (1) For a knowing or intentional violation, one thousand five
26 hundred dollars (\$1,500).
- 27 (2) For a violation other than a knowing or intentional violation,
28 five hundred dollars (\$500).

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

33 (i) An elderly person relying upon an uncured or incurable
34 deceptive act, including an act related to hypnotism, may bring an
35 action to recover treble damages, if appropriate.

- 36 (j) An offer to cure is:
 - 37 (1) not admissible as evidence in a proceeding initiated under this
38 section unless the offer to cure is delivered by a supplier to the
39 consumer or a representative of the consumer before the supplier
40 files the supplier's initial response to a complaint; and
 - 41 (2) only admissible as evidence in a proceeding initiated under
42 this section to prove that a supplier is not liable for attorney's fees

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under subsection (k).
If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

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

SECTION 2. IC 24-10 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 10. CONSUMER PROTECTION ASSISTANCE FUND

Chapter 1. Definitions

Sec. 1. As used in this article, "fund" refers to the consumer protection assistance fund established by IC 24-10-2-1.

Sec. 2. As used in this article, "office" refers to the office of attorney general created by IC 4-6-1-2.

Sec. 3. As used in this article, "qualifying claim" means a claim that:

- (1) subject to IC 24-10-2-2(b), is filed with the office on a form prescribed by the office;**
- (2) is based on a court order that:**
 - (A) is issued in a case instituted or maintained by the office in connection with a violation of a statute set forth in IC 24-10-2-1(c); and**
 - (B) awards restitution to one (1) or more qualifying individuals;**
- (3) identifies each qualifying individual who:**
 - (A) has been awarded restitution in the order described in subdivision (2); and**
 - (B) seeks payment from the fund through the claim submitted;**
- (4) attests that the party ordered to pay the restitution has not paid the full amount ordered with respect to each qualifying individual identified under subdivision (3); and**
- (5) seeks payment from the fund of any amount of the restitution:**
 - (A) ordered by the court; and**
 - (B) not paid by the party ordered to pay the restitution;**

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1 with respect to each qualifying individual identified under
 2 subdivision (3).
 3 **Sec. 4. As used in this article, "qualifying individual" means an**
 4 **Indiana resident who:**
 5 (1) is awarded restitution by a court in a case that:
 6 (A) is instituted or maintained by the office; and
 7 (B) involves a violation by one (1) or more other persons of
 8 a statute set forth in IC 24-10-2-1(c); and
 9 (2) assists or otherwise cooperates with the office in the
 10 investigation, prosecution, or enforcement of the case.
 11 **Chapter 2. Establishment and Purposes of Fund**
 12 **Sec. 1. (a) The consumer protection assistance fund is**
 13 **established for the purpose of compensating qualifying individuals**
 14 **who submit qualifying claims to the office. The fund shall be**
 15 **administered by the office.**
 16 (b) The fund consists of:
 17 (1) appropriations made to the fund by the general assembly;
 18 (2) grants, gifts, and donations intended for deposit in the
 19 fund; and
 20 (3) at the discretion of the office, money recovered or received
 21 by the office for consumer protection purposes if use of the
 22 money is not otherwise restricted.
 23 (c) Money in the fund may be used to make payments to
 24 qualifying individuals who file qualifying claims with the office in
 25 connection with a case involving a violation by one (1) or more
 26 other persons of any of the following statutes, including rules
 27 adopted under the authority of the following statutes:
 28 (1) IC 24-4.7 (concerning telephone solicitation of consumers)
 29 if the case concerns a violation involving telephone
 30 solicitations made in connection with any practice or
 31 transaction governed by a statute described in subdivisions (2)
 32 through (4).
 33 (2) IC 24-5-15 (concerning credit services organizations).
 34 (3) IC 24-5.5 (concerning mortgage rescue fraud).
 35 (4) IC 24-9 (concerning home loan practices).
 36 (d) The expenses of administering the fund shall be paid from
 37 money in the fund.
 38 (e) The treasurer of state shall invest the money in the fund not
 39 currently needed to meet the obligations of the fund in the same
 40 manner as other public money may be invested. Interest that
 41 accrues from these investments shall be deposited in the fund.
 42 (f) Money in the fund at the end of a state fiscal year does not

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revert to the state general fund.

Sec. 2. (a) The office may not make a payment to a qualifying individual under section 1(c) of this chapter unless the party ordered to pay restitution to the qualifying individual has not paid the full amount of the restitution ordered by the court in the order described in IC 24-10-1-3(2).

(b) A qualifying individual who seeks payment from the fund of any amount of the restitution:

- (1)** ordered by the court to be paid to the individual; and
 - (2)** not paid by the party ordered to pay the restitution;
- may file a claim with the office on a form prescribed by the office. A claim filed under this section must be received by the office not later than one hundred eighty (180) days after the date of the order described in IC 24-10-1-3(2). The office may grant an extension of time for good cause shown by the individual filing the claim. However, the office may not accept a claim that is received more than two (2) years after the date of the order described in IC 24-10-1-3(2).

(c) The personal information (as defined in IC 4-1-11-3) of an individual who files a claim with the office under subsection (b) is confidential and may not be disclosed or distributed outside the office, except as may be required by law.

(d) Upon receiving a qualifying claim, the office may pay, from money available in the fund, to each qualifying individual identified in the claim under IC 24-10-1-3(3), an amount that:

- (1)** is determined at the discretion of the office;
- (2)** may be up to the amount of the restitution awarded to the qualifying individual and not paid by the party ordered to pay the restitution; and
- (3)** may not exceed three thousand dollars (\$3,000).

(e) The limits set forth in subsection (d) do not prohibit a qualifying individual from seeking to recover, in any action or through any other lawful remedy available to the individual, any amount of the restitution that:

- (1)** is awarded to the qualifying individual in the order described in IC 24-10-1-3(2);
- (2)** is not paid by the party ordered to pay the restitution; and
- (3)** exceeds the amount paid to the qualifying individual by the office under subsection (d).

Sec. 3. The state is not liable for a determination or an award made by the office under this chapter except to the extent that money is available in the fund on the date the award is determined

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1 **by the office under this chapter.**
2 **Sec. 4. The office may adopt rules under IC 4-22-2 to implement**
3 **this article.**
4 **SECTION 3. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1182, 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.

FOLEY, Chair

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1182, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 16, delete "If a civil penalty is recovered under this".

Page 3, delete lines 17 through 26.

Page 3, line 31, delete "If a civil".

Page 3, delete lines 32 through 42.

Page 4, delete lines 32 through 42.

Page 5, delete lines 1 through 29.

Page 6, delete lines 35 through 42, begin a new paragraph and insert:

"(b) The fund consists of:

**(1) appropriations made to the fund by the general assembly;
and**

**(2) grants, gifts, and donations intended for deposit in the
fund."**

Page 7, delete lines 1 through 4.

Page 8, line 7, delete "shall" and insert "**may**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1182 as printed February 1, 2011.)

ESPICH, Chair

Committee Vote: yeas 19, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Economic Development, to which was referred House Bill No. 1182, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Page 4, line 28, delete "IC 24-10-2-1(d);" and insert "**IC 24-10-2-1(c);**".

Page 5, line 8, delete "IC 24-10-2-1(d);" and insert "**IC 24-10-2-1(c);**".

Page 5, delete line 18.

Page 5, line 20, delete "fund." and insert "**fund; and**

(3) at the discretion of the office, money recovered or received by the office for consumer protection purposes if use of the money is not otherwise restricted.".

Page 5, delete lines 21 through 22.

Page 5, line 23, delete "(d)" and insert "**(c)**".

Page 5, line 36, delete "(e)" and insert "**(d)**".

Page 5, line 38, delete "(f)" and insert "**(e)**".

Page 5, line 42, delete "(g)" and insert "**(f)**".

Page 6, line 3, delete "1(d)" and insert "**1(c)**".

and when so amended that said bill do pass.

(Reference is to HB 1182 as printed February 15, 2011.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 9, Nays 0.

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