
SENATE BILL No. 529

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-10.

Synopsis: Stolen or misappropriated information technology. Makes it an unfair practice for a person that manufactures a product while using stolen or misappropriated information technology in any part of the person's business operations to sell or offer for sale in Indiana the product, separately or as a component of another product, in competition with a product that was manufactured without the use of such stolen or misappropriated information technology. Provides that a person injured by the unfair practice may sue for relief after the owner of the stolen or misappropriated information technology provides notice and the person using the stolen or misappropriated information technology fails to cease using the stolen or misappropriated information technology by a certain period of time. Provides that a person that sues for relief may receive injunctive relief or recover damages. Provides that, if a court finds that a person has sold or offered for sale products in Indiana that were manufactured while using stolen or misappropriated information technology, there is a rebuttable presumption that the person who is injured by the unfair practice will suffer irreparable harm if the products continue to be sold or offered for sale in Indiana. Allows the court to order punitive damages if the unfair practice is willful. Requires a court to order costs and reasonable attorney's fees to the party that prevails in an action. Establishes a defense to an action if the aggregate retail value of the stolen or misappropriated information technology used is less than \$10,000. Provides that a court may, if certain conditions apply, enjoin the sale or offering for sale in Indiana of any product that was sold or offered for sale in violation of law, including enjoining a third party
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Effective: July 1, 2011.

Merritt

January 18, 2011, read first time and referred to Committee on Judiciary.



from selling or offering for sale the product. Provides that a person that sues for relief may proceed in rem and that the products are subject to attachment. Provides that a court may not enforce an order for injunctive relief or attachment against third parties that meet certain requirements. Requires the court, pursuant to applicable rules of discovery, to permit the plaintiff, the plaintiff's representative, or if appropriate, a judicially appointed designee to enter onto the defendant's business premises to inspect any information technology, records, files, or other evidence that is relevant to the alleged unfair practice. Establishes exceptions and other requirements.

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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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SENATE BILL No. 529



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 24-10 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 3 2011]:
- 4 **ARTICLE 10. USE OF STOLEN OR MISAPPROPRIATED**
- 5 **INFORMATION TECHNOLOGY WHILE MANUFACTURING**
- 6 **PRODUCTS**
- 7 **Chapter 1. Application of Article**
- 8 **Sec. 1. This article does not apply to a product sold or offered**
- 9 **for sale in Indiana that is eligible for copyright protection under**
- 10 **the federal copyright laws.**
- 11 **Chapter 2. Definitions**
- 12 **Sec. 1. The definitions in this chapter apply throughout this**
- 13 **article.**
- 14 **Sec. 2. "Business operations" means the parts of a person's**



1 business that support in any way the design, manufacture,
2 distribution, marketing, or sales of a product.

3 Sec. 3. "Manufacture" means to develop, manufacture, produce,
4 or assemble a product.

5 Sec. 4. "Person" means an individual, a corporation, a limited
6 liability company, a partnership, or other legal entity.

7 Sec. 5. "Product" means any good or other tangible item that is
8 manufactured.

9 Sec. 6. "Retail value" means the retail value in Indiana of the
10 information technology that has been stolen or misappropriated
11 multiplied by the number of units of the stolen or misappropriated
12 information technology that the person used in the person's
13 business operations.

14 Sec. 7. "Sell", "selling", or "sale" means to sell, lease, trade,
15 barter, or exchange in any manner.

16 Sec. 8. "Sold" means to have sold, leased, traded, bartered, or
17 exchanged in any manner.

18 Sec. 9. "Stolen or misappropriated information technology"
19 means hardware or software that a person who manufactures a
20 product:

- 21 (1) acquired;
- 22 (2) appropriated; or
- 23 (3) used;

24 in whole or part, in violation of law.

25 Chapter 3. Unfair Practice; Rights of Action

26 Sec. 1. It is an unfair practice for a person who manufactures
27 a product while using stolen or misappropriated information
28 technology in any part of the person's business operations to sell or
29 offer for sale in Indiana the product, separately or as a component
30 of another product, in competition with a product that was
31 manufactured without the use of such stolen or misappropriated
32 information technology.

33 Sec. 2. (a) Subject to subsection (c) and section 4 of this chapter,
34 a person who is injured by an unfair practice described in section
35 1 of this chapter may sue for relief in a court with jurisdiction.

36 (b) To recover relief under this article, a person who sues under
37 this section must establish the following by a preponderance of the
38 evidence:

- 39 (1) The person who is seeking relief manufactures products
40 that are sold or offered for sale in Indiana in competition with
41 the products that are sold or offered for sale in violation of
42 section 1 of this chapter.

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1 (2) The person who is seeking relief did not manufacture the
2 product while using the stolen or misappropriated
3 information technology in the person's business operations
4 that the person who allegedly violated section 1 of this chapter
5 used.

6 (c) A person may not sue for relief under this chapter if the
7 allegation that the information technology is stolen or
8 misappropriated is based on a claim that:

9 (1) the information technology infringes a patent or trade
10 secret under applicable law; or

11 (2) the person's use of the information technology violates the
12 terms of a license that allows users to modify and redistribute
13 any source code associated with the technology free of charge.

14 (d) In an action under this chapter, the use of stolen or
15 misappropriated information technology may be established:

16 (1) from the business records of a person who allegedly
17 committed an unfair practice under section 1 of this chapter;

18 (2) by evidence derived from techniques used by the owner of
19 the information technology to establish use of stolen or
20 misappropriated information technology; or

21 (3) by other competent evidence.

22 Sec. 3. (a) A person who sues for relief under section 2 of this
23 chapter may:

24 (1) receive injunctive relief, which includes enjoining the
25 person committing an unfair practice under section 1 of this
26 chapter from selling or offering for sale in Indiana a product
27 that was manufactured while using stolen or misappropriated
28 information technology as described under section 1 of this
29 chapter; or

30 (2) recover the greater of:

31 (A) actual damages; or

32 (B) an amount of not more than twenty percent (20%) of
33 the retail price of each product sold or offered for sale in
34 Indiana in violation of section 1 of this chapter.

35 (b) In any action under this section for injunctive relief, if a
36 court finds that a person has sold or offered for sale products in
37 Indiana that were manufactured while using stolen or
38 misappropriated information technology as described in section 1
39 of this chapter, there is a rebuttable presumption that the person
40 who is injured by the unfair practice will suffer irreparable harm
41 if the products continue to be sold or offered for sale in Indiana.

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1 (c) If a violation under section 1 of this chapter is willful, a court
2 may award the injured person punitive damages up to three (3)
3 times the amount the injured person may recover under subsection
4 (a)(2).

5 (d) A court shall award court costs and reasonable attorney's
6 fees to the party that prevails in an action under this chapter.

7 (e) Except as provided in section 6 of this chapter, if a court
8 determines that a person in violation of section 1 of this chapter
9 lacks sufficient attachable assets in Indiana to satisfy a judgment
10 for damages under subsection (a)(2), the court shall enjoin the:

- 11 (1) sale; or
 - 12 (2) offering for sale;
- 13 in Indiana of any product that was sold or offered for sale in
14 violation of section 1 of this chapter, including enjoining the sale or
15 offering for sale of the product by a third party.

16 (f) It is a defense to an action under this chapter that the
17 aggregate retail value of the stolen or misappropriated information
18 technology used in the person's business operations while
19 manufacturing the product is less than ten thousand dollars
20 (\$10,000). A defendant must prove the defense under this
21 subsection by a preponderance of the evidence.

22 Sec. 4. (a) A person who is injured by an unfair practice may not
23 sue for relief under section 2 of this chapter unless the following
24 requirements are satisfied:

25 (1) The owner of the stolen or misappropriated information
26 technology or the owner's authorized representative has
27 provided written notice described in subsection (b) to the
28 person using the stolen or misappropriated information
29 technology, notifying the person that the person is using stolen
30 or misappropriated information technology.

31 (2) The person that is using the stolen or misappropriated
32 information technology has failed to cease using the stolen or
33 misappropriated information technology within:

34 (A) ninety (90) days after receiving the notice under
35 subdivision (1); or

36 (B) if the owner of the stolen or misappropriated
37 information technology or an authorized representative of
38 the owner provides written authorization extending the
39 period that a person has to cease using the stolen or
40 misappropriated information technology beyond ninety
41 (90) days, the period authorized by the owner or
42 authorized representative of the owner under this clause.

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1 (b) The written notice under subsection (a)(1) must include the
2 following:

3 (1) Information that identifies:

4 (A) the stolen or misappropriated information technology;
5 and

6 (B) the lawful owner of the information technology that
7 has been stolen or misappropriated.

8 (2) A statement that the owner of the information technology
9 has reasonable belief that the person has acquired,
10 appropriated, or used the information technology in violation
11 of law.

12 Sec. 5. (a) A person that sues for relief under section 2 of this
13 chapter may proceed in rem against a product that is allegedly sold
14 or offered for sale in violation of section 1 of this chapter.

15 (b) Except as provided in subsection (c) and notwithstanding
16 IC 34-25-2-1, all products described in subsection (a) are subject
17 to attachment at the time a complaint is filed or after a complaint
18 has been filed and may not be sold or offered for sale in Indiana
19 regardless of:

20 (1) whether damages can be recovered under section 3(a)(2)
21 of this chapter; or

22 (2) who has ownership of or an ownership interest in the
23 product.

24 (c) Any third party who is served with or otherwise subject to
25 an order for attachment as described under subsection (b):

26 (1) must be afforded reasonable notice and an opportunity to
27 be heard; and

28 (2) may avoid attachment at any time by satisfying the
29 requirements in section 6 of this chapter.

30 Sec. 6. (a) A court may not enforce an order for injunctive relief
31 or attachment under this chapter against a person, other than a
32 person in violation of section 1 of this chapter, who has an interest
33 in a product if the person establishes one (1) or more of the
34 following by a preponderance of the evidence:

35 (1) The person is the end consumer of the product or acquired
36 the product after the product was sold to an end consumer.

37 (2) The person owns or is a business with an annual revenue
38 of not more than fifty million dollars (\$50,000,000).

39 (3) The person:

40 (A) acquired the product:

41 (i) in good faith reliance on a written assurance from the
42 manufacturer of the product that the product was

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1 manufactured without the use of stolen or
 2 misappropriated information technology; and
 3 (ii) before the person received a written notice that the
 4 product was sold or offered for sale in violation of
 5 section 1 of this chapter; and
 6 (B) not later than one hundred eighty (180) days after the
 7 person received notice that the product was sold or offered
 8 for sale in violation of section 1 of this chapter,
 9 implemented commercially reasonable practices and
 10 procedures to prevent future acquisition of products whose
 11 sale or offer for sale would violate section 1 of this chapter.

12 (4) The person has:

13 (A) established commercially reasonable practices and
 14 procedures to prevent the acquisition of products sold or
 15 offered for sale in violation of section 1 of this chapter; and
 16 (B) acted in good faith to ensure compliance with the
 17 practices and procedures described under clause (A).

18 (b) There is a rebuttable presumption that a person establishes
 19 the elements of proof required by subsection (a)(4) if the person:

20 (1) includes in any contracts with manufacturers and
 21 suppliers, including the manufacturer in violation of section
 22 1 of this chapter, a provision that:

23 (A) prohibits the use of stolen or misappropriated
 24 information technology by the manufacturer; and
 25 (B) allows the person to audit the manufacturer to ensure
 26 compliance with the contract provision described in clause
 27 (A); and

28 (2) has an established practice of auditing the manufacturers
 29 to verify compliance with the provision described in
 30 subdivision (1)(A).

31 Sec. 7. (a) In any action under section 2 of this chapter, the court
 32 shall, under applicable rules of discovery, permit:

33 (1) the plaintiff;
 34 (2) the plaintiff's representative; or
 35 (3) if appropriate, a judicially appointed designee;
 36 to enter onto the defendant's business premises to inspect any
 37 information technology, records, files, or other evidence that is
 38 relevant to an alleged violation of section 1 of this chapter.

39 (b) Any discovery granted under subsection (a) is in addition to,
 40 and may not limit, any other discovery permitted under applicable
 41 rules, including rules providing for entry onto land or other
 42 property for inspection and other purposes.

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