

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1024 be amended to read as follows:

- 1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning trade
3 regulation and insurance.
4 Page 1, between the enacting clause and line 1, begin a new
5 paragraph and insert:
6 "SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.1-2009,
7 SECTION 137, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The following acts, and the
9 following representations as to the subject matter of a consumer
10 transaction, made orally, in writing, or by electronic communication,
11 by a supplier, are deceptive acts:
12 (1) That such subject of a consumer transaction has sponsorship,
13 approval, performance, characteristics, accessories, uses, or
14 benefits it does not have which the supplier knows or should
15 reasonably know it does not have.
16 (2) That such subject of a consumer transaction is of a particular
17 standard, quality, grade, style, or model, if it is not and if the
18 supplier knows or should reasonably know that it is not.
19 (3) That such subject of a consumer transaction is new or unused,
20 if it is not and if the supplier knows or should reasonably know
21 that it is not.
22 (4) That such subject of a consumer transaction will be supplied
23 to the public in greater quantity than the supplier intends or
24 reasonably expects.
25 (5) That replacement or repair constituting the subject of a
26 consumer transaction is needed, if it is not and if the supplier
27 knows or should reasonably know that it is not.
28 (6) That a specific price advantage exists as to such subject of a
29 consumer transaction, if it does not and if the supplier knows or
30 should reasonably know that it does not.

- 1 (7) That the supplier has a sponsorship, approval, or affiliation in
2 such consumer transaction the supplier does not have, and which
3 the supplier knows or should reasonably know that the supplier
4 does not have.
- 5 (8) That such consumer transaction involves or does not involve
6 a warranty, a disclaimer of warranties, or other rights, remedies,
7 or obligations, if the representation is false and if the supplier
8 knows or should reasonably know that the representation is false.
- 9 (9) That the consumer will receive a rebate, discount, or other
10 benefit as an inducement for entering into a sale or lease in return
11 for giving the supplier the names of prospective consumers or
12 otherwise helping the supplier to enter into other consumer
13 transactions, if earning the benefit, rebate, or discount is
14 contingent upon the occurrence of an event subsequent to the time
15 the consumer agrees to the purchase or lease.
- 16 (10) That the supplier is able to deliver or complete the subject of
17 the consumer transaction within a stated period of time, when the
18 supplier knows or should reasonably know the supplier could not.
19 If no time period has been stated by the supplier, there is a
20 presumption that the supplier has represented that the supplier
21 will deliver or complete the subject of the consumer transaction
22 within a reasonable time, according to the course of dealing or the
23 usage of the trade.
- 24 (11) That the consumer will be able to purchase the subject of the
25 consumer transaction as advertised by the supplier, if the supplier
26 does not intend to sell it.
- 27 (12) That the replacement or repair constituting the subject of a
28 consumer transaction can be made by the supplier for the estimate
29 the supplier gives a customer for the replacement or repair, if the
30 specified work is completed and:
- 31 (A) the cost exceeds the estimate by an amount equal to or
32 greater than ten percent (10%) of the estimate;
- 33 (B) the supplier did not obtain written permission from the
34 customer to authorize the supplier to complete the work even
35 if the cost would exceed the amounts specified in clause (A);
- 36 (C) the total cost for services and parts for a single transaction
37 is more than seven hundred fifty dollars (\$750); and
- 38 (D) the supplier knew or reasonably should have known that
39 the cost would exceed the estimate in the amounts specified in
40 clause (A).
- 41 (13) That the replacement or repair constituting the subject of a
42 consumer transaction is needed, and that the supplier disposes of
43 the part repaired or replaced earlier than seventy-two (72) hours
44 after both:
- 45 (A) the customer has been notified that the work has been
46 completed; and

- 1 (B) the part repaired or replaced has been made available for
 2 examination upon the request of the customer.
- 3 (14) Engaging in the replacement or repair of the subject of a
 4 consumer transaction if the consumer has not authorized the
 5 replacement or repair, and if the supplier knows or should
 6 reasonably know that it is not authorized.
- 7 (15) The act of misrepresenting the geographic location of the
 8 supplier by listing a fictitious business name or an assumed
 9 business name (as described in IC 23-15-1) in a local telephone
 10 directory if:
- 11 (A) the name misrepresents the supplier's geographic location;
 12 (B) the listing fails to identify the locality and state of the
 13 supplier's business;
 14 (C) calls to the local telephone number are routinely forwarded
 15 or otherwise transferred to a supplier's business location that
 16 is outside the calling area covered by the local telephone
 17 directory; and
 18 (D) the supplier's business location is located in a county that
 19 is not contiguous to a county in the calling area covered by the
 20 local telephone directory.
- 21 (16) The act of listing a fictitious business name or assumed
 22 business name (as described in IC 23-15-1) in a directory
 23 assistance database if:
- 24 (A) the name misrepresents the supplier's geographic location;
 25 (B) calls to the local telephone number are routinely forwarded
 26 or otherwise transferred to a supplier's business location that
 27 is outside the local calling area; and
 28 (C) the supplier's business location is located in a county that
 29 is not contiguous to a county in the local calling area.
- 30 (17) The violation by a supplier of IC 24-3-4 concerning
 31 cigarettes for import or export.
- 32 (18) The act of a supplier in knowingly selling or reselling a
 33 product to a consumer if the product has been recalled, whether
 34 by the order of a court or a regulatory body, or voluntarily by the
 35 manufacturer, distributor, or retailer, unless the product has been
 36 repaired or modified to correct the defect that was the subject of
 37 the recall.
- 38 (19) The violation by a supplier of 47 U.S.C. 227, including any
 39 rules or regulations issued under 47 U.S.C. 227.
- 40 **(20) The violation by a residential contractor of IC 24-5-27**
 41 **concerning residential repairs.**
- 42 (b) Any representations on or within a product or its packaging or
 43 in advertising or promotional materials which would constitute a
 44 deceptive act shall be the deceptive act both of the supplier who places
 45 such representation thereon or therein, or who authored such materials,
 46 and such other suppliers who shall state orally or in writing that such

1 representation is true if such other supplier shall know or have reason
2 to know that such representation was false.

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

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

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

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

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

31 SECTION 2. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS
32 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2011]:

34 **Chapter 27. Residential Repairs**

35 **Sec. 1. As used in this chapter, "person" refers to an individual**
36 **or an entity.**

37 **Sec. 2. As used in this chapter, "pay or rebate" includes the**
38 **following:**

39 **(1) The granting of an allowance or a discount against fees to**
40 **be charged.**

41 **(2) The payment to an insured, or another person that is**
42 **associated with residential real estate, of compensation,**
43 **including a gift, prize, bonus, coupon, credit, referral fee, or**
44 **other item of monetary value, for any reason including**
45 **display of a sign or advertisement on the residential real**
46 **estate.**

1 **Sec. 3. As used in this chapter, "residential contractor" means**
2 **a person that is in the business of contracting with an owner or**
3 **possessor of residential real estate to:**

- 4 **(1) repair or replace roof systems; or**
5 **(2) perform other exterior repair, replacement, construction,**
6 **or reconstruction work;**
7 **on the residential real estate.**

8 **Sec. 4. As used in this chapter, "residential real estate" means**
9 **a new or existing building consisting of not more than four (4)**
10 **residential units. The term includes a detached garage.**

11 **Sec. 5. As used in this chapter, "roof system" includes roof**
12 **coverings, roof sheathing, roof weatherproofing, and insulation.**

13 **Sec. 6. A residential contractor shall not advertise or promise to**
14 **pay or rebate any part of an insurance deductible as an**
15 **inducement to the sale of goods or services.**

16 **Sec. 7. Before entering into a contract for goods or services for**
17 **which payment will be made from the proceeds of a property and**
18 **casualty insurance policy claim, a residential contractor shall do**
19 **the following:**

20 **(1) Furnish to the insured the following statement in at least**
21 **10 point, boldface type: "You may cancel this contract at any**
22 **time before midnight on the fifth business day after you have**
23 **received written notification from your insurance company**
24 **that all or any part of the claim or contract is not a covered**
25 **loss under the insurance policy. See attached notice of**
26 **cancellation form for an explanation of this right".**

27 **(2) Furnish to each insured a fully completed form, in**
28 **duplicate, that is captioned "NOTICE OF**
29 **CANCELLATION" and is attached to the contract but easily**
30 **detachable, and that contains the following statement in at**
31 **least 10 point, boldface type:**

32 **"NOTICE OF CANCELLATION**
33 **If you are notified by your insurance company that all or any part**
34 **of the claim or contract is not a covered loss under the insurance**
35 **policy, you may cancel the contract by mailing or delivering a**
36 **signed and dated copy of this cancellation notice or any other**
37 **written notice to (name of contractor) at (address of contractor's**
38 **place of business) at any time before midnight on the fifth business**
39 **day after you have received such notice from your insurance**
40 **company.**

41 **If you cancel the contract, any payments made by you under the**
42 **contract will be returned to you within ten (10) business days**
43 **following receipt by the contractor of your cancellation notice.**

44 **I HEREBY CANCEL THIS TRANSACTION**
45 _____
46 **(date)**
47 **(insured's signature)_____".**

1 **Sec. 8. (a) A person who has entered into a contract with a**
2 **residential contractor for goods or services for which payment will**
3 **be made from the proceeds of a property and casualty insurance**
4 **policy claim may cancel the contract before midnight on the fifth**
5 **business day after the insured has received written notice from the**
6 **insurance company that any part of the claim or contract is not a**
7 **covered loss under the insurance policy.**

8 **(b) Cancellation of a contract under subsection (a) is evidenced**
9 **by the insured's provision of written notice:**

10 **(1) to the residential contractor at the address specified in the**
11 **contract; and**

12 **(2) of the insured's intent not to be bound by the contract .**

13 **Notice of cancellation by mail is effective upon deposit of the**
14 **written notice into the United States mail, postage prepaid and**
15 **properly addressed to the residential contractor as described in**
16 **subdivision (1).**

17 **Sec. 9. (a) Subject to subsection (b), not more than ten (10) days**
18 **after a contract described in sections 7 and 8 of this chapter is**
19 **cancelled, the residential contractor shall tender to the insured:**

20 **(1) any payment or deposit made by the insured; and**

21 **(2) any note or other evidence of indebtedness of the insured.**

22 **(b) If a residential contractor has performed emergency**
23 **services, acknowledged by the insured in writing to be necessary to**
24 **prevent damage to the residential real estate, the contractor is**
25 **entitled to the reasonable value of the emergency services.**

26 **(c) A contract provision that requires payment of a fee for**
27 **anything other than emergency services is not enforceable against**
28 **an insured who has cancelled a contract under this chapter.**

29 **Sec. 10. A residential contractor shall not:**

30 **(1) represent or negotiate;**

31 **(2) offer to represent or negotiate; or**

32 **(3) advertise representation or negotiation;**

33 **on behalf of an owner or possessor of residential real estate with**

1 **respect to an insurance claim connected with the repair or**
2 **replacement of roof systems or performance of other exterior**
3 **repair, replacement, construction, or reconstruction work on the**
4 **residential real estate.**

5 **Sec. 11. A residential contractor that violates this chapter**
6 **commits a deceptive act under IC 24-5-0.5."**

7 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1024 as printed March 25, 2011.)

Senator ECKERTY