

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1273**

Citations Affected: IC 4-6-14-2; IC 9-13-2-19.5; IC 9-23-3; IC 16-28-1-11; IC 16-37; IC 24-4.7; IC 24-5-0.5; IC 24-9-2-7; IC 25-1-7; IC 25-22.5-2; IC 25-35.6-1-8; IC 27-7-3-15.5; IC 34-30-2-96.4.

Synopsis: Consumer protection and licensing matters. Defines health care provider for purposes of the statute authorizing the attorney general to take certain actions with respect to abandoned health records and other records containing personal information. Provides that it is an unfair practice for an automotive manufacturer or distributor to fail to pay certain claims made by an automotive dealer. Authorizes an automotive manufacturer or distributor to: (1) audit certain claims; or (2) charge back to a dealer any amounts paid on false or materially unsubstantiated claims. Specifies that the statute governing the quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone applies to a residential telephone subscriber who meets certain requirements. Requires the attorney general's consumer protection division (division) to notify Indiana residents of the right of certain subscribers or users to place a telephone number on the listing. Specifies what is included as a "telephone sales call". Amends the statute concerning deceptive consumer sales to: (1) provide that a violation of the federal Fair Debt Collection Practices Act (FDCPA) is a deceptive act; and (2) include cross references to certain consumer protection statutes, the violation of which constitutes a deceptive act. Limits the civil penalty that the attorney general may recover for a violation of the FDCPA to \$1,000 per consumer. Specifies that for purposes of the statute governing home loan practices, a "deceptive act" includes a knowing or intentional misrepresentation made regarding real estate transactions and mortgage transactions. Authorizes a physician last in attendance of a deceased to initiate the document process for the death record. Specifies that a professional who violates the vital statistics statute is subject to discipline under the professional's license instead of committing a Class B misdemeanor, and that the state department of health may not sanction providers for certain violations under the statute until January 1, 2012. Authorizes the medical licensing board of Indiana (board) to investigate and assess civil penalties for specified violations by licensed physicians. Requires the division to forward complaints for specified violations to the board unless certain circumstances are met. Establishes the physician compliance fund. Specifies requirements for the reporting of penalties and prohibits the board from reporting specified administrative penalties. Requires certain certified nurse aides to be certified by the state department and requires the state department to: (1) establish a program; (2) prescribe education and training programs; (3) determine specified standards; and (4) establish annual

certification fees; for certified nurse aides who work in health facilities. Recognizes speech-language pathologists who: (1) before September 1, 1990, completed all the course work and obtained all the experience required to receive a life license from the department of education; and (2) were issued a life license by the department of education; as eligible to supervise speech-language pathology support personnel (in lieu of another requirement to have obtained a certificate of clinical competence from a nationally recognized association). Removes a provision requiring that, to supervise speech-language pathology support personnel, a speech-language pathologist have at least three years of clinical experience. Provides for licensure of speech-language pathologists if certain continuing education standards are met. Voids part of an administrative rule concerning qualification requirements to supervise speech-language pathology support personnel. Provides that the requirement of the collection and storage in an electronic system of certain information about persons participating in or assisting with certain residential mortgage transactions also applies in the case of certain residential real estate transactions that do not involve mortgage transactions. Requires certain additional information about residential mortgage transactions and residential real estate transactions to be collected and stored in the system. **(This conference committee report does the following: (1) Removes from EHB 1273 (as reprinted April 6, 2011) all provisions concerning the practice of dentistry, including provisions prohibiting dental insurers and health maintenance organizations from requiring dentists to accept certain payments. (2) Makes technical corrections.)**

Effective: Upon passage; July 1, 2010 (retroactive); December 31, 2010 (retroactive); July 1, 2011.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1273 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-6-14-2, AS ADDED BY P.L.84-2010, SECTION
- 3 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 4 2011]: Sec. 2. As used in this chapter, "health care provider" means:
- 5 (1) a person listed in IC 16-39-7-1(a)(1) through
- 6 IC 16-39-7-1(a)(11); or
- 7 (2) a person licensed, certified, registered, or regulated by a
- 8 board listed in IC 25-1-9-1.
- 9 SECTION 2. IC 9-13-2-19.5 IS ADDED TO THE INDIANA CODE
- 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 11 1, 2011]: **Sec. 19.5. "Charge back", for purposes of IC 9-23-3, has**
- 12 **the meaning set forth in IC 9-23-3-0.2.**
- 13 SECTION 3. IC 9-23-3-0.2 IS ADDED TO THE INDIANA CODE
- 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 15 1, 2011]: **Sec. 0.2. As used in this chapter, "charge back" means a**
- 16 **manufacturer induced return of incentive payments to a**
- 17 **manufacturer by a dealer. The term includes a manufacturer**
- 18 **drawing funds from an account of a dealer.**
- 19 SECTION 4. IC 9-23-3-15, AS AMENDED BY P.L.76-2007,
- 20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2011]: Sec. 15. (a) It is an unfair practice for a manufacturer
- 22 or distributor to:

- 1 (1) fail to pay all claims made by dealers for compensation for:
 2 (A) delivery and preparation work; ~~and~~
 3 (B) warranty work; **and**
 4 (C) **incentive payments;**
 5 within thirty (30) days after approval;
 6 (2) fail to approve or disapprove the claims within thirty (30) days
 7 after receipt; or
 8 (3) disapprove a claim without notice to the dealer in writing of
 9 the grounds for disapproval.
- 10 (b) **Subject to subsection (c),** a manufacturer or distributor may:
 11 (1) audit claims made by a dealer **for warranty work or**
 12 **incentive payments for up to one (1) year after the date on**
 13 **which a claim is paid;** or
 14 (2) charge back to a dealer any amounts paid on false or
 15 unsubstantiated claims **for warranty work or incentive**
 16 **payments.**
 17 ~~for up to two (2) years after the date on which a claim is paid.~~
 18 ~~However, the limitations of this subsection do not apply if the~~
 19 ~~manufacturer or distributor can prove fraud on a claim.~~ A manufacturer
 20 or distributor shall not discriminate among dealers with regard to
 21 auditing or charging back claims.
- 22 (c) **The limitations of subsection (b) do not apply if the**
 23 **manufacturer or distributor can prove fraud on a claim.**
- 24 SECTION 5. IC 16-28-1-11 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) Unless an
 26 individual is certified under this section:
 27 (1) the individual may not practice as a qualified medication aide
 28 **or a certified nurse aide;** and
 29 (2) a facility may not employ the individual as a qualified
 30 medication aide **or a certified nurse aide.**
- 31 (b) The ~~council~~ **state department** shall do the following:
 32 (1) Establish a program for the certification of qualified
 33 medication aides **and certified nurse aides** who work in facilities
 34 licensed under this article.
 35 (2) Prescribe education and training programs for qualified
 36 medication aides **and certified nurse aides,** including course and
 37 inservice requirements. The training program must include a
 38 competency test that the individual must pass before being
 39 granted an initial certification.
 40 (3) Determine the standards concerning the functions that may be
 41 performed by a qualified medication aide **and a certified nurse**
 42 **aide.**
 43 (4) Establish annual certification fees for qualified medication
 44 aides.
 45 (5) Adopt rules under IC 4-22-2 necessary to implement and
 46 enforce this section.
- 47 (c) The **state** department shall maintain a registry of each individual
 48 who is:
 49 (1) certified as a:
 50 (A) qualified medication aide; **or**
 51 (B) **certified nurse aide; or**

1 **(2) registered as a home health aide under rules adopted**
 2 **under IC 16-27-1-7.**

3 (d) The department may conduct hearings for violations of this
 4 section under IC 4-21.5.

5 SECTION 6. IC 16-37-1-3.1, AS ADDED BY P.L.61-2009,
 6 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 DECEMBER 31, 2010 (RETROACTIVE)]: Sec. 3.1. (a) Beginning
 8 January 1, 2011, the state department shall establish the Indiana birth
 9 registration system (IBRS) for recording in an electronic format live
 10 births in Indiana.

11 (b) Beginning January 1, 2011, the state department shall establish
 12 the Indiana death registration system (IDRS) for recording in an
 13 electronic format deaths in Indiana.

14 (c) Submission of records on births and deaths shall be entered by:

- 15 (1) funeral directors;
- 16 (2) physicians;
- 17 (3) coroners;
- 18 (4) medical examiners;
- 19 (5) persons in attendance at birth; and
- 20 (6) local health departments;

21 using the electronic system created by the state department under this
 22 section.

23 (d) A person in attendance at a live birth shall report a birth to the
 24 local health officer in accordance with IC 16-37-2-2.

25 (e) Death records shall be submitted as follows, using the Indiana
 26 death registration system:

27 (1) The:

28 **(A) physician last in attendance upon the deceased; or**
 29 **(B) person in charge of interment;**
 30 shall initiate the document process. ~~and~~ **If the person in charge**
 31 **of interment initiates the process, the person in charge of**
 32 **interment shall** electronically submit the certificate required
 33 under IC 16-37-3-5 to the physician last in attendance upon the
 34 deceased not later than five (5) days after the death.

35 (2) The physician last in attendance upon the deceased shall
 36 electronically certify to the local health department the cause of
 37 death on the certificate of death not later than five (5) days after:

38 **(A) initiating the document process; or**
 39 **(B) receiving under IC 16-37-3-5 the electronic notification**
 40 from the person in charge of interment.

41 (3) The local health officer shall submit the reports required under
 42 IC 16-37-1-5 to the state department not later than five (5) days
 43 after electronically receiving under IC 16-37-3-5 the completed
 44 certificate of death from the physician last in attendance.

45 SECTION 7. IC 16-37-1-13 IS AMENDED TO READ AS
 46 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Except as
 47 **provided in subsection (c) or (d) or as** otherwise provided, a person
 48 who recklessly violates or fails to comply with this chapter commits a
 49 Class B misdemeanor.

50 (b) Each day a violation continues constitutes a separate offense.

51 **(c) A person who:**

1 **(1) is licensed under IC 25 in a profession listed in section**
 2 **3.1(c) of this chapter; and**
 3 **(2) recklessly violates or fails to comply with this chapter;**
 4 **is subject only to sanctions under IC 25-1-9-4(a)(3).**

5 **(d) The state department may not begin sanctioning a person for**
 6 **failing to submit a document in electronic format as required in**
 7 **section 3.1 of this chapter until January 1, 2012.**

8 SECTION 8. IC 16-37-3-3, AS AMENDED BY P.L.61-2009,
 9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2011]: Sec. 3. (a) The **physician last in attendance upon the**
 11 **deceased or the** person in charge of interment shall file a certificate of
 12 death or of stillbirth with the local health officer of the jurisdiction in
 13 which the death or stillbirth occurred.

14 (b) Notwithstanding subsection (a), beginning January 1, 2011, **the**
 15 **physician last in attendance upon the deceased or** the person in
 16 charge of interment shall use the Indiana death registration system
 17 established under IC 16-37-1-3.1 to file a certificate of death with the
 18 local health officer of the jurisdiction in which the death occurred. The
 19 local health officer shall retain a copy of the certificate of death.

20 SECTION 9. IC 16-37-3-4 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. The **physician last**
 22 **in attendance upon the deceased or the** person in charge of interment
 23 shall secure the personal data required by the state department by rules
 24 adopted under IC 4-22-2 for preparation of the certificate of death or
 25 of stillbirth from the persons best qualified to give the information.

26 SECTION 10. IC 16-37-3-5, AS AMENDED BY P.L.61-2009,
 27 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2011]: Sec. 5. (a) **If** the person in charge of interment **initiates**
 29 **the process, the person in charge of interment** shall present a
 30 certificate of death to the physician last in attendance upon the
 31 deceased, who shall certify the cause of death upon the certificate of
 32 death or of stillbirth.

33 (b) Notwithstanding subsection (a), beginning January 1, 2011,
 34 using the Indiana death registration system established under
 35 IC 16-37-1-3.1, **if** the person in charge of interment **initiates the**
 36 **process, the person in charge of interment** shall electronically
 37 provide a certificate of death to the physician last in attendance upon
 38 the deceased. The physician last in attendance upon the deceased shall
 39 electronically certify to the local health department the cause of death
 40 on the certificate of death, using the Indiana death registration system.

41 SECTION 11. IC 24-4.7-2-2 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) "Consumer"
 43 means a residential telephone subscriber who: ~~is an actual or a~~
 44 prospective:

45 **(1) for the telephone service received:**

46 **(A) has a place of primary use in Indiana; or**

47 **(B) is issued an Indiana telephone number or an Indiana**
 48 **identification number; and**

49 **(2) is an actual or a prospective:**

50 ~~(A)~~ **(A) purchaser, lessee, or recipient of consumer goods or**
 51 **services; or**

- 1 (2) **(B)** donor to a charitable organization.
- 2 **(b) The term includes a user of a prepaid wireless calling service**
3 **(as defined in IC 6-2.5-1-22.4) who:**
- 4 **(1) is issued an Indiana telephone number or an Indiana**
5 **identification number for the service; or**
- 6 **(2) purchases prepaid wireless calling service in a retail**
7 **transaction that is sourced to Indiana (as determined under**
8 **IC 6-2.5-12-16).**
- 9 SECTION 12. IC 24-4.7-2-5 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. "Doing business
11 in Indiana" means:
- 12 **(1) making; or**
- 13 **(2) causing others to make;**
- 14 telephone sales calls to consumers located in Indiana whether the
15 telephone sales calls are made from a location in Indiana or outside
16 Indiana.
- 17 SECTION 13. IC 24-4.7-2-7 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. "Listing" refers
19 to the no telephone sales solicitation listing published by the division
20 under IC 24-4.7-3 that lists the ~~names~~ **telephone numbers** of ~~persons~~
21 **consumers** who do not wish to receive telephone sales calls.
- 22 SECTION 14. IC 24-4.7-2-7.5 IS ADDED TO THE INDIANA
23 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
24 [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. "Place of primary use",**
25 **with respect to a telephone subscriber, means the street address**
26 **representative of where the subscriber's use of the telephone**
27 **service primarily occurs, which must be:**
- 28 **(1) the residential street address of the subscriber or, in the**
29 **case of a subscriber of interconnected VOIP service, the**
30 **subscriber's registered location (as defined in 47 CFR 9.3);**
31 **and**
- 32 **(2) in the case of mobile telecommunications services (as**
33 **defined in IC 6-8.1-15-7), within the licensed service area of**
34 **the home service provider, as set forth in IC 6-8.1-15-8.**
- 35 SECTION 15. IC 24-4.7-2-8 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. "Telephone
37 number" means a residential telephone number **that:**
- 38 **(1) is assigned to a subscriber who has a place of primary use**
39 **in Indiana; or**
- 40 **(2) otherwise represents an Indiana telephone number or is**
41 **associated with an Indiana identification number.**
- 42 SECTION 16. IC 24-4.7-2-9 IS AMENDED TO READ AS
43 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a)** "Telephone
44 sales call" means a telephone call made to a consumer for any of the
45 following purposes:
- 46 (1) Solicitation of a sale of consumer goods or services.
47 (2) Solicitation of a charitable contribution.
48 (3) Obtaining information that will or may be used for the direct
49 solicitation of a sale of consumer goods or services or an
50 extension of credit for such purposes.
- 51 **(b) The term includes any of the following:**

- 1 (1) A call made by use of **an** automated dialing ~~or~~ **device**.
- 2 (2) **A call made by use of a** recorded message ~~devices~~ **device**.
- 3 (3) **Transmission of:**
- 4 (A) **a text message; or**
- 5 (B) **a graphic message;**
- 6 **using short message service (SMS).**
- 7 (4) **Transmission of:**
- 8 (A) **an image;**
- 9 (B) **a photograph; or**
- 10 (C) **a multimedia message;**
- 11 **using multimedia messaging service (MMS).**
- 12 SECTION 17. IC 24-4.7-3-4 IS AMENDED TO READ AS
- 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The division
- 14 shall notify Indiana residents of the rights and duties created by this
- 15 article, **including the right of any of the following consumers to**
- 16 **place a telephone number on the listing established and maintained**
- 17 **under section 1 of this chapter:**
- 18 (1) **Subscribers of interconnected VOIP service.**
- 19 (2) **Subscribers of mobile telecommunications service (as**
- 20 **defined in IC 6-8.1-15-7).**
- 21 (3) **Users of a prepaid wireless calling service, as described in**
- 22 **IC 24-4.7-2-2(b).**
- 23 SECTION 18. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007,
- 24 SECTION 165, IS AMENDED TO READ AS FOLLOWS
- 25 [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) As used in this chapter:
- 26 (1) "Consumer transaction" means a sale, lease, assignment,
- 27 award by chance, or other disposition of an item of personal
- 28 property, real property, a service, or an intangible, except
- 29 securities and policies or contracts of insurance issued by
- 30 corporations authorized to transact an insurance business under
- 31 the laws of the state of Indiana, with or without an extension of
- 32 credit, to a person for purposes that are primarily personal,
- 33 familial, charitable, agricultural, or household, or a solicitation to
- 34 supply any of these things. However, the term includes the
- 35 following:
- 36 (A) A transfer of structured settlement payment rights under
- 37 IC 34-50-2.
- 38 (B) An unsolicited advertisement sent to a person by telephone
- 39 facsimile machine offering a sale, lease, assignment, award by
- 40 chance, or other disposition of an item of personal property,
- 41 real property, a service, or an intangible.
- 42 (C) **Collecting or attempting to collect a debt owed or due,**
- 43 **or asserted to be owed or due, to another person.**
- 44 (2) "Person" means an individual, corporation, the state of Indiana
- 45 or its subdivisions or agencies, business trust, estate, trust,
- 46 partnership, association, nonprofit corporation or organization, or
- 47 cooperative or any other legal entity.
- 48 (3) "Supplier" means the following:
- 49 (A) A seller, lessor, assignor, or other person who regularly
- 50 engages in or solicits consumer transactions, including
- 51 soliciting a consumer transaction by using a telephone

- 1 facsimile machine to transmit an unsolicited advertisement.
 2 The term includes a manufacturer, wholesaler, or retailer,
 3 whether or not the person deals directly with the consumer.
- 4 (B) A person who contrives, prepares, sets up, operates,
 5 publicizes by means of advertisements, or promotes a pyramid
 6 promotional scheme.
- 7 **(C) A debt collector.**
- 8 (4) "Subject of a consumer transaction" means the personal
 9 property, real property, services, or intangibles offered or
 10 furnished in a consumer transaction.
- 11 (5) "Cure" as applied to a deceptive act, means either:
 12 (A) to offer in writing to adjust or modify the consumer
 13 transaction to which the act relates to conform to the
 14 reasonable expectations of the consumer generated by such
 15 deceptive act and to perform such offer if accepted by the
 16 consumer; or
 17 (B) to offer in writing to rescind such consumer transaction
 18 and to perform such offer if accepted by the consumer.
- 19 The term includes an offer in writing of one (1) or more items of
 20 value, including monetary compensation, that the supplier
 21 delivers to a consumer or a representative of the consumer if
 22 accepted by the consumer.
- 23 (6) "Offer to cure" as applied to a deceptive act is a cure that:
 24 (A) is reasonably calculated to remedy a loss claimed by the
 25 consumer; and
 26 (B) includes a minimum additional amount that is the greater
 27 of:
 28 (i) ten percent (10%) of the value of the remedy under
 29 clause (A), but not more than four thousand dollars
 30 (\$4,000); or
 31 (ii) five hundred dollars (\$500);
 32 as compensation for attorney's fees, expenses, and other costs
 33 that a consumer may incur in relation to the deceptive act.
- 34 (7) "Uncured deceptive act" means a deceptive act:
 35 (A) with respect to which a consumer who has been damaged
 36 by such act has given notice to the supplier under section 5(a)
 37 of this chapter; and
 38 (B) either:
 39 (i) no offer to cure has been made to such consumer within
 40 thirty (30) days after such notice; or
 41 (ii) the act has not been cured as to such consumer within a
 42 reasonable time after the consumer's acceptance of the offer
 43 to cure.
- 44 (8) "Incurable deceptive act" means a deceptive act done by a
 45 supplier as part of a scheme, artifice, or device with intent to
 46 defraud or mislead. The term includes a failure of a transferee of
 47 structured settlement payment rights to timely provide a true and
 48 complete disclosure statement to a payee as provided under
 49 IC 34-50-2 in connection with a direct or indirect transfer of
 50 structured settlement payment rights.
- 51 (9) "Pyramid promotional scheme" means any program utilizing

1 a pyramid or chain process by which a participant in the program
 2 gives a valuable consideration exceeding one hundred dollars
 3 (\$100) for the opportunity or right to receive compensation or
 4 other things of value in return for inducing other persons to
 5 become participants for the purpose of gaining new participants
 6 in the program. The term does not include ordinary sales of goods
 7 or services to persons who are not purchasing in order to
 8 participate in such a scheme.

9 (10) "Promoting a pyramid promotional scheme" means:

10 (A) inducing or attempting to induce one (1) or more other
 11 persons to become participants in a pyramid promotional
 12 scheme; or

13 (B) assisting another in promoting a pyramid promotional
 14 scheme.

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

17 (12) "Telephone facsimile machine" means equipment that has
 18 the capacity to transcribe text or images, or both, from:

19 (A) paper into an electronic signal and to transmit that signal
 20 over a regular telephone line; or

21 (B) an electronic signal received over a regular telephone line
 22 onto paper.

23 (13) "Unsolicited advertisement" means material advertising the
 24 commercial availability or quality of:

25 (A) property;

26 (B) goods; or

27 (C) services;

28 that is transmitted to a person without the person's prior express
 29 invitation or permission, in writing or otherwise.

30 **(14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5)).**

31 **(15) "Debt collector" has the meaning set forth in 15 U.S.C.**
 32 **1692a(6). The term does not include a person admitted to the**
 33 **practice of law in Indiana if the person is acting within the**
 34 **course and scope of the person's practice as an attorney.**

35 (b) As used in section 3(a)(15) and 3(a)(16) of this chapter:

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

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

46 (3) "Local telephone number" refers to a telephone number that
 47 has the three (3) number prefix used by the provider of telephone
 48 service for telephones physically located within the area covered
 49 by the local telephone directory in which the number is listed. The
 50 term does not include long distance numbers or 800-, 888-, or
 51 900- exchange numbers listed in a local telephone directory.

1 SECTION 19. IC 24-5-0.5-3, AS AMENDED BY P.L.1-2009,
2 SECTION 137, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The following acts, and the
4 following representations as to the subject matter of a consumer
5 transaction, made orally, in writing, or by electronic communication,
6 by a supplier, are deceptive acts:

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

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

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

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

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

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

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

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

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

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

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

- 1 (12) That the replacement or repair constituting the subject of a
2 consumer transaction can be made by the supplier for the estimate
3 the supplier gives a customer for the replacement or repair, if the
4 specified work is completed and:
5 (A) the cost exceeds the estimate by an amount equal to or
6 greater than ten percent (10%) of the estimate;
7 (B) the supplier did not obtain written permission from the
8 customer to authorize the supplier to complete the work even
9 if the cost would exceed the amounts specified in clause (A);
10 (C) the total cost for services and parts for a single transaction
11 is more than seven hundred fifty dollars (\$750); and
12 (D) the supplier knew or reasonably should have known that
13 the cost would exceed the estimate in the amounts specified in
14 clause (A).
- 15 (13) That the replacement or repair constituting the subject of a
16 consumer transaction is needed, and that the supplier disposes of
17 the part repaired or replaced earlier than seventy-two (72) hours
18 after both:
19 (A) the customer has been notified that the work has been
20 completed; and
21 (B) the part repaired or replaced has been made available for
22 examination upon the request of the customer.
- 23 (14) Engaging in the replacement or repair of the subject of a
24 consumer transaction if the consumer has not authorized the
25 replacement or repair, and if the supplier knows or should
26 reasonably know that it is not authorized.
- 27 (15) The act of misrepresenting the geographic location of the
28 supplier by listing a fictitious business name or an assumed
29 business name (as described in IC 23-15-1) in a local telephone
30 directory if:
31 (A) the name misrepresents the supplier's geographic location;
32 (B) the listing fails to identify the locality and state of the
33 supplier's business;
34 (C) calls to the local telephone number are routinely forwarded
35 or otherwise transferred to a supplier's business location that
36 is outside the calling area covered by the local telephone
37 directory; and
38 (D) the supplier's business location is located in a county that
39 is not contiguous to a county in the calling area covered by the
40 local telephone directory.
- 41 (16) The act of listing a fictitious business name or assumed
42 business name (as described in IC 23-15-1) in a directory
43 assistance database if:
44 (A) the name misrepresents the supplier's geographic location;
45 (B) calls to the local telephone number are routinely forwarded
46 or otherwise transferred to a supplier's business location that
47 is outside the local calling area; and
48 (C) the supplier's business location is located in a county that
49 is not contiguous to a county in the local calling area.
- 50 (17) The violation by a supplier of IC 24-3-4 concerning
51 cigarettes for import or export.

1 (18) The act of a supplier in knowingly selling or reselling a
 2 product to a consumer if the product has been recalled, whether
 3 by the order of a court or a regulatory body, or voluntarily by the
 4 manufacturer, distributor, or retailer, unless the product has been
 5 repaired or modified to correct the defect that was the subject of
 6 the recall.

7 (19) The violation by a supplier of 47 U.S.C. 227, including any
 8 rules or regulations issued under 47 U.S.C. 227.

9 **(20) The violation by a supplier of the federal Fair Debt
 10 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
 11 rules or regulations issued under the federal Fair Debt
 12 Collection Practices Act (15 U.S.C. 1692 et seq.).**

13 **(21) A violation of IC 24-5-7 (concerning health spa services),
 14 as set forth in IC 24-5-7-17.**

15 **(22) A violation of IC 24-5-8 (concerning business opportunity
 16 transactions), as set forth in IC 24-5-8-20.**

17 **(23) A violation of IC 24-5-10 (concerning home consumer
 18 transactions), as set forth in IC 24-5-10-18.**

19 **(24) A violation of IC 24-5-11 (concerning home improvement
 20 contracts), as set forth in IC 24-5-11-14.**

21 **(25) A violation of IC 24-5-12 (concerning telephone
 22 solicitations), as set forth in IC 24-5-12-23.**

23 **(26) A violation of IC 24-5-13.5 (concerning buyback motor
 24 vehicles), as set forth in IC 24-5-13.5-14.**

25 **(27) A violation of IC 24-5-14 (concerning automatic
 26 dialing-announcing devices), as set forth in IC 24-5-14-13.**

27 **(28) A violation of IC 24-5-15 (concerning credit services
 28 organizations), as set forth in IC 24-5-15-11.**

29 **(29) A violation of IC 24-5-16 (concerning unlawful motor
 30 vehicle subleasing), as set forth in IC 24-5-16-18.**

31 **(30) A violation of IC 24-5-17 (concerning environmental
 32 marketing claims), as set forth in IC 24-5-17-14.**

33 **(31) A violation of IC 24-5-19 (concerning deceptive
 34 commercial solicitation), as set forth in IC 24-5-19-11.**

35 **(32) A violation of IC 24-5-21 (concerning prescription drug
 36 discount cards), as set forth in IC 24-5-21-7.**

37 **(33) A violation of IC 24-5-23.5-7 (concerning real estate
 38 appraisals), as set forth in IC 24-5-23.5-9.**

39 **(34) A violation of IC 24-5-26 (concerning identity theft), as
 40 set forth in IC 24-5-26-3.**

41 **(35) A violation of IC 24-5.5 (concerning mortgage rescue
 42 fraud), as set forth in IC 24-5.5-6-1.**

43 **(36) A violation of IC 24-8 (concerning promotional gifts and
 44 contests), as set forth in IC 24-8-6-3.**

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

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

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

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

17 (f) For purposes of subsection (a)(15) **and (a)(16)**, a telephone
 18 company or other provider of a telephone directory or directory
 19 assistance service or its officer or agent is immune from liability for
 20 publishing the listing of a fictitious business name or assumed business
 21 name of a supplier in its directory or directory assistance database
 22 unless the telephone company or other provider of a telephone
 23 directory or directory assistance service is the same person as the
 24 supplier who has committed the deceptive act.

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

29 SECTION 20. IC 24-5-0.5-4, AS AMENDED BY HEA 1182-2011,
 30 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2011]: Sec. 4. (a) A person relying upon an uncured or
 32 incurable deceptive act may bring an action for the damages actually
 33 suffered as a consumer as a result of the deceptive act or five hundred
 34 dollars (\$500), whichever is greater. The court may increase damages
 35 for a willful deceptive act in an amount that does not exceed the greater
 36 of:

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

40 Except as provided in subsection (j), the court may award reasonable
 41 attorney fees to the party that prevails in an action under this
 42 subsection. This subsection does not apply to a consumer transaction
 43 in real property, including a claim or action involving a construction
 44 defect (as defined in IC 32-27-3-1(5)) brought against a construction
 45 professional (as defined in IC 32-27-3-1(4)), except for purchases of
 46 time shares and camping club memberships. **This subsection does not**
 47 **apply with respect to a deceptive act described in section 3(a)(20)**
 48 **of this chapter.** This subsection also does not apply to a violation of
 49 IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a
 50 person under this section have priority over any civil penalty imposed
 51 under this chapter.

1 (b) Any person who is entitled to bring an action under subsection
2 (a) on the person's own behalf against a supplier for damages for a
3 deceptive act may bring a class action against such supplier on behalf
4 of any class of persons of which that person is a member and which has
5 been damaged by such deceptive act, subject to and under the Indiana
6 Rules of Trial Procedure governing class actions, except as herein
7 expressly provided. Except as provided in subsection (j), the court may
8 award reasonable attorney fees to the party that prevails in a class
9 action under this subsection, provided that such fee shall be determined
10 by the amount of time reasonably expended by the attorney and not by
11 the amount of the judgment, although the contingency of the fee may
12 be considered. Except in the case of an extension of time granted by the
13 attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10,
14 any money or other property recovered in a class action under this
15 subsection which cannot, with due diligence, be restored to consumers
16 within one (1) year after the judgment becomes final shall be returned
17 to the party depositing the same. This subsection does not apply to a
18 consumer transaction in real property, except for purchases of time
19 shares and camping club memberships. **This subsection does not**
20 **apply with respect to a deceptive act described in section 3(a)(20)**
21 **of this chapter.** Actual damages awarded to a class have priority over
22 any civil penalty imposed under this chapter.

23 (c) The attorney general may bring an action to enjoin a deceptive
24 act, **including a deceptive act described in section 3(a)(20) of this**
25 **chapter, notwithstanding subsections (a) and (b).** However, the
26 attorney general may seek to enjoin patterns of incurable deceptive acts
27 with respect to consumer transactions in real property. In addition, the
28 court may:

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

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

40 (e) In any action under subsection (a) or (b), upon the filing of the
41 complaint or on the appearance of any defendant, claimant, or any
42 other party, or at any later time, the trial court, the supreme court, or the
43 court of appeals may require the plaintiff, defendant, claimant, or any
44 other party or parties to give security, or additional security, in such
45 sum as the court shall direct to pay all costs, expenses, and
46 disbursements that shall be awarded against that party or which that
47 party may be directed to pay by any interlocutory order by the final
48 judgment or on appeal.

49 (f) Any person who violates the terms of an injunction issued under
50 subsection (c) shall forfeit and pay to the state a civil penalty of not
51 more than fifteen thousand dollars (\$15,000) per violation. For the

1 purposes of this section, the court issuing an injunction shall retain
 2 jurisdiction, the cause shall be continued, and the attorney general
 3 acting in the name of the state may petition for recovery of civil
 4 penalties. Whenever the court determines that an injunction issued
 5 under subsection (c) has been violated, the court shall award
 6 reasonable costs to the state.

7 (g) If a court finds any person has knowingly violated section 3 or
 8 10 of this chapter, other than section 3(a)(19) **or 3(a)(20)** of this
 9 chapter, the attorney general, in an action pursuant to subsection (c),
 10 may recover from the person on behalf of the state a civil penalty of a
 11 fine not exceeding five thousand dollars (\$5,000) per violation.

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

15 (1) For a knowing or intentional violation, one thousand five
 16 hundred dollars (\$1,500).

17 (2) For a violation other than a knowing or intentional violation,
 18 five hundred dollars (\$500).

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

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

26 (j) An offer to cure is:

27 (1) not admissible as evidence in a proceeding initiated under this
 28 section unless the offer to cure is delivered by a supplier to the
 29 consumer or a representative of the consumer before the supplier
 30 files the supplier's initial response to a complaint; and

31 (2) only admissible as evidence in a proceeding initiated under
 32 this section to prove that a supplier is not liable for attorney's fees
 33 under subsection (k).

34 If the offer to cure is timely delivered by the supplier, the supplier may
 35 submit the offer to cure as evidence to prove in the proceeding in
 36 accordance with the Indiana Rules of Trial Procedure that the supplier
 37 made an offer to cure.

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

43 **(l) If a court finds that a person has knowingly violated section**
 44 **3(a)(20) of this chapter, the attorney general, in an action under**
 45 **subsection (c), may recover from the person on behalf of the state**
 46 **a civil penalty not exceeding one thousand dollars (\$1,000) per**
 47 **consumer. In determining the amount of the civil penalty in any**
 48 **action by the attorney general under this subsection, the court shall**
 49 **consider, among other relevant factors, the frequency and**
 50 **persistence of noncompliance by the debt collector, the nature of**
 51 **the noncompliance, and the extent to which the noncompliance was**

1 **intentional. A person may not be held liable in any action by the**
 2 **attorney general for a violation of section 3(a)(20) of this chapter**
 3 **if the person shows by a preponderance of evidence that the**
 4 **violation was not intentional and resulted from a bona fide error,**
 5 **notwithstanding the maintenance of procedures reasonably**
 6 **adapted to avoid the error. A person may not be held liable in any**
 7 **action for a violation of this chapter for contacting a person other**
 8 **than the debtor, if the contact is made in compliance with the Fair**
 9 **Debt Collection Practices Act.**

10 SECTION 21. IC 24-9-2-7 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) "Deceptive act"
 12 means an act or a practice as part of a ~~consumer credit~~ mortgage
 13 transaction involving real property located in Indiana (as defined in
 14 **IC 24-9-3-7(a)**), or of a real estate transaction (as defined in
 15 **IC 24-9-3-7(b)**), in which a person at the time of the transaction
 16 knowingly or intentionally:

- 17 (1) makes a material misrepresentation; or
- 18 (2) conceals material information regarding the terms or
- 19 conditions of the transaction.

20 (b) For purposes of this section, "knowingly" means having actual
 21 knowledge at the time of the transaction.

22 SECTION 22. IC 25-1-7-3 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a) Except as**
 24 **provided in subsection (b)**, the division is responsible for the
 25 investigation of complaints concerning licensees.

26 **(b) The medical licensing board of Indiana shall investigate a**
 27 **complaint concerning a physician licensed under IC 25-22.5 and a**
 28 **violation specified in IC 25-22.5-2-8. The division shall forward a**
 29 **complaint concerning a physician licensed under IC 25-22.5 and a**
 30 **violation specified in IC 25-22.5-2-8 to the medical licensing board**
 31 **of Indiana for investigation by the board. However, if the**
 32 **complaint includes a violation in addition to a violation specified in**
 33 **IC 25-22.5-2-8, the division shall investigate the complaint in its**
 34 **entirety and notify the medical licensing board of Indiana of the**
 35 **investigation.**

36 SECTION 23. IC 25-1-7-5, AS AMENDED BY P.L.206-2005,
 37 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2011]: Sec. 5. (a) Subsection (b)(1) does not apply to:

- 39 (1) a complaint filed by:
 - 40 (A) a member of any of the boards listed in section 1 of this
 - 41 chapter; or
 - 42 (B) the Indiana professional licensing agency; or
- 43 (2) a complaint filed under IC 25-1-5-4.

44 **(b) Except as provided in section 3(b) of this chapter**, the director
 45 has the following duties and powers:

- 46 (1) The director shall make an initial determination as to the merit
 47 of each complaint. A copy of a complaint having merit shall be
 48 submitted to the board having jurisdiction over the licensee's
 49 regulated occupation, that board thereby acquiring jurisdiction
 50 over the matter except as otherwise provided in this chapter.
- 51 (2) The director shall through any reasonable means notify the

- 1 licensee of the nature and ramifications of the complaint and of
 2 the duty of the board to attempt to resolve the complaint through
 3 negotiation.
 4 (3) The director shall report any pertinent information regarding
 5 the status of the complaint to the complainant.
 6 (4) The director may investigate any written complaint against a
 7 licensee. The investigation shall be limited to those areas in which
 8 there appears to be a violation of statutes governing the regulated
 9 occupation.
 10 (5) The director has the power to subpoena witnesses and to send
 11 for and compel the production of books, records, papers, and
 12 documents for the furtherance of any investigation under this
 13 chapter. The circuit or superior court located in the county where
 14 the subpoena is to be issued shall enforce any such subpoena by
 15 the director.

16 SECTION 24. IC 25-1-7-10, AS AMENDED BY P.L.1-2007,
 17 SECTION 167, IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) **Except as provided in**
 19 **section 3(b) of this chapter**, all complaints and information pertaining
 20 to the complaints shall be held in strict confidence until the attorney
 21 general files notice with the board of the attorney general's intent to
 22 prosecute the licensee.

23 (b) A person in the employ of the office of attorney general or any
 24 of the boards, or any person not a party to the complaint, may not
 25 disclose or further a disclosure of information concerning the
 26 complaint unless the disclosure is required:

- 27 (1) under law; or
 28 (2) for the advancement of an investigation.

29 SECTION 25. IC 25-22.5-2-5, AS AMENDED BY P.L.1-2006,
 30 SECTION 446, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2011]: Sec. 5. **Except for a penalty under**
 32 **section 8 of this chapter**, the funds obtained from registration and
 33 penalty fees shall, upon receipt thereof, be accounted for and paid over
 34 by the agency to the treasurer of state and be placed in the general fund
 35 of the state. The expenses of the board shall be paid from the general
 36 fund upon appropriation being made therefor in the manner required by
 37 law for the making of such appropriations. The amount to be expended
 38 by the board shall not exceed the amount collected by the board from
 39 all sources.

40 SECTION 26. IC 25-22.5-2-8 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) The board shall implement**
 43 **a program to investigate and assess a civil penalty of not more than**
 44 **one thousand dollars (\$1,000) against a physician licensed under**
 45 **this article for the following violations:**

- 46 (1) **Licensure renewal fraud.**
 47 (2) **Failure to timely provide copies of patient medical records.**
 48 (3) **Overcharging for copies of patient medical records.**
 49 (4) **Improper release of confidential patient information.**
 50 (5) **Failure to maintain accurate patient records.**
 51 (6) **Improper termination of a physician and patient**

- 1 relationship.
- 2 (7) Misleading advertising concerning specific board
- 3 certification.
- 4 (8) Practicing with an expired medical license.
- 5 (9) Providing office based anesthesia without the proper
- 6 accreditation.
- 7 (10) Failure to perform duties required for issuing birth or
- 8 death certificates.
- 9 (b) An individual who is investigated by the board and found by
- 10 the board to have committed a violation specified in subsection (a)
- 11 may appeal the determination made by the board in accordance
- 12 with IC 4-21.5.
- 13 (c) In accordance with the federal Health Care Quality
- 14 Improvement Act (42 U.S.C. 11132), the board shall report a
- 15 disciplinary board action that is subject to reporting to the
- 16 National Practitioner Data Bank. However, the board may not
- 17 report board action against a physician for only an administrative
- 18 penalty described in subsection (a). The board's action concerning
- 19 disciplinary action or an administrative penalty described in
- 20 subsection (a) shall be conducted at a hearing that is open to the
- 21 public.
- 22 (d) The physician compliance fund is established to provide
- 23 funds for administering and enforcing the investigation of
- 24 violations specified in subsection (a). The fund shall be
- 25 administered by the Indiana professional licensing agency.
- 26 (e) The expenses of administering the physician compliance fund
- 27 shall be paid from the money in the fund. The fund consists of
- 28 penalties collected through investigations and assessments by the
- 29 board concerning violations specified in subsection (a). Money in
- 30 the fund at the end of a state fiscal year does not revert to the state
- 31 general fund.
- 32 SECTION 27. IC 25-35.6-1-8, AS AMENDED BY P.L.197-2007,
- 33 SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 JULY 1, 2011]: Sec. 8. (a) The board shall adopt rules under IC 4-22-2
- 35 to define the role of support personnel, including the following:
- 36 (1) Supervisory responsibilities of the speech-language
- 37 pathologist.
- 38 (2) Ratio of support personnel to speech-language pathologists.
- 39 (3) Scope of duties and restrictions of responsibilities for each
- 40 type of support personnel.
- 41 (4) Frequency, duration, and documentation of supervision.
- 42 (5) Education and training required to perform services.
- 43 (6) Procedures for renewing registration and terminating duties.
- 44 (b) A speech-language pathologist must meet the following
- 45 qualifications to supervise speech-language pathology support
- 46 personnel:
- 47 (1) Hold a current license as a speech-language pathologist issued
- 48 by the board.
- 49 ~~(2) Have at least three (3) years of clinical experience.~~
- 50 ~~(2) Except for an individual who:~~
- 51 (A) before September 1, 1990, completed all the course

1 **work and obtained all the experience required to receive a**
 2 **life license from the department of education; and**
 3 **(B) was issued a life license by the department of**
 4 **education;**

5 hold a certificate of clinical competence in speech-language
 6 pathology or its equivalent issued by a nationally recognized
 7 association for speech-language and hearing.

8 (c) Speech-language pathology support personnel may provide
 9 support services only under the supervision of a speech-language
 10 pathologist.

11 SECTION 28. IC 27-7-3-15.5, AS AMENDED BY P.L.35-2010,
 12 SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 UPON PASSAGE]: Sec. 15.5. (a) This section applies to ~~a transaction~~
 14 ~~that:~~ **the following transactions:**

15 (1) ~~is a single family residential:~~ **A mortgage transaction (as**
 16 **defined in IC 24-9-3-7(a)) that:**

17 (A) is:

18 (i) a first lien purchase money mortgage transaction; or

19 ~~(B) (ii) a refinancing transaction; and~~

20 ~~(2) (B) is closed by a closing agent after December 31, 2009.~~

21 **(2) A real estate transaction (as defined in IC 24-9-3-7(b))**
 22 **that:**

23 **(A) does not involve a mortgage transaction described in**
 24 **subdivision (1); and**

25 **(B) is closed by a closing agent (as defined in**
 26 **IC 6-1.1-12-43(a)(2)) after December 31, 2011.**

27 (b) **For purposes of this subsection, a person described in this**
 28 **subsection is involved in a transaction to which this section applies**
 29 **if the person participates in or assists with, or will participate in or**
 30 **assist with, a transaction to which this section applies. ~~Not later than~~**
 31 ~~September 1, 2009;~~ The department shall establish and maintain an
 32 electronic system for the collection and storage of the following
 33 information, **to the extent applicable**, concerning ~~any of the following~~
 34 ~~persons that have participated in or assisted with a transaction to which~~
 35 ~~this section applies; or that will participate in or assist with a~~
 36 ~~transaction to which this section applies:~~

37 (1) **In the case of a transaction described in subsection (a)(1),**
 38 the name and license number (under IC 23-2-5) of each loan
 39 brokerage business involved in the transaction.

40 (2) **In the case of a transaction described in subsection (a)(1),**
 41 the name and license or registration number of any mortgage loan
 42 originator who is:

43 (A) either licensed or registered under state or federal law as
 44 a mortgage loan originator consistent with the Secure and Fair
 45 Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221
 46 Title V); and

47 (B) involved in the transaction.

48 (3) The name and license number (under IC 25-34.1) of each:

49 (A) principal broker; and

50 (B) salesperson or broker-salesperson, if any;

51 involved in the transaction.

- 1 (4) **The following information:**
 2 (A) **The:**
 3 (i) name of; and
 4 ~~(B)~~ (ii) code assigned by the National Association of
 5 Insurance Commissioners (NAIC) to;
 6 each title insurance underwriter involved in the transaction.
 7 **(B) The type of title insurance policy issued in connection**
 8 **with the transaction.**
 9 (5) The name and license number (under IC 27-1-15.6) of each
 10 title insurance agency and agent involved in the transaction as a
 11 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
 12 (6) **The following information:**
 13 (A) **The name and:**
 14 ~~(A)~~ (i) license or certificate number (under IC 25-34.1-3-8)
 15 of each licensed or certified real estate appraiser; or
 16 ~~(B)~~ (ii) license number (under IC 25-34.1) of each broker;
 17 who appraises the property that is the subject of the
 18 transaction.
 19 **(B) The name and registration number (under**
 20 **IC 25-34.1-11-10) of any appraisal management company**
 21 **that performs appraisal management services (as defined**
 22 **in IC 25-34.1-11-3) in connection with the transaction.**
 23 (7) **In the case of a transaction described in subsection (a)(1),**
 24 **the name of the mortgagee creditor and, if the mortgagee**
 25 **creditor is required to be licensed under IC 24-4.4, the license**
 26 **number of the mortgagee creditor.**
 27 (8) In the case of a first lien purchase money mortgage transaction
 28 **described in subsection (a)(1)(A)(i) or (a)(2),** the name of the
 29 seller of the property that is the subject of the transaction.
 30 (9) In the case of a first lien purchase money mortgage transaction
 31 **described in subsection (a)(1)(A)(i), the following information:**
 32 (A) The name of the buyer of the property that is the subject of
 33 the transaction.
 34 (B) **The purchase price of the property that is the subject**
 35 **of the transaction.**
 36 (C) **The loan amount of the mortgage transaction.**
 37 (10) **In the case of a transaction described in subsection (a)(2),**
 38 **the following information:**
 39 (A) **The name of the buyer of the property that is the**
 40 **subject of the transaction.**
 41 (B) **The purchase price of the property that is the subject**
 42 **of the transaction.**
 43 (11) **In the case of a transaction described in subsection**
 44 **(a)(1)(A)(ii), the following information:**
 45 (A) **The name of the borrower in the mortgage transaction.**
 46 (B) **The loan amount of the refinancing.**
 47 ~~(10)~~ (12) **The:**
 48 (A) name; and
 49 (B) license number, certificate number, registration number,
 50 or other code, as appropriate;
 51 of any other person that ~~participates in or assists with~~ **is involved**

- 1 **in** a transaction to which this section applies, as the department
 2 may prescribe.
- 3 (c) The system established by the department under this section
 4 must include a form that:
- 5 (1) is uniformly accessible in an electronic format to the closing
 6 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
 7 (2) allows the closing agent to do the following:
- 8 (A) Input information identifying the property that is the
 9 subject of the transaction by lot or parcel number, street
 10 address, or some other means of identification that the
 11 department determines:
- 12 (i) is sufficient to identify the property; and
 13 (ii) is determinable by the closing agent.
- 14 (B) Subject to subsection (d) and to the extent determinable,
 15 input the **applicable** information described in subsection (b).
 16 ~~with respect to each person described in subsection (b) that~~
 17 ~~participates in or assists with the transaction.~~
- 18 (C) Respond to the following questions, **if applicable**:
- 19 (i) "On what date did you receive the closing instructions
 20 from the creditor in the transaction?"
 21 (ii) "On what date did the transaction close?"
- 22 (D) Submit the form electronically to a data base maintained
 23 by the department.
- 24 (d) Not later than the time of the closing, each person described in
 25 subsection (b), other than a person described in subsection (b)(8), ~~or~~
 26 (b)(9), **(b)(10), or (b)(11)**, shall provide to the closing agent in the
 27 transaction the person's:
- 28 (1) legal name; and
 29 (2) license number, certificate number, registration number, or
 30 NAIC code, as appropriate;
- 31 to allow the closing agent to comply with subsection (c)(2)(B). ~~★ In~~
 32 ~~the case of a transaction described in subsection (a)(1), the person~~
 33 ~~described in subsection (b)(7) shall, with the cooperation of any~~
 34 ~~person involved in the transaction and described in subsection~~
 35 ~~(b)(6)(A) or (b)(6)(B), provide the information required by this~~
 36 ~~subsection for any person described in subsection (b)(6). that appraises~~
 37 ~~the property that is the subject of the transaction on behalf of the~~
 38 ~~person described in subsection (b)(7): In the case of a transaction~~
 39 ~~described in subsection (a)(1)(A)(ii), the person described in~~
 40 ~~subsection (b)(7) shall also provide the information described in~~
 41 ~~subsection (b)(11). A person described in subsection (b)(3)(B) who is~~
 42 ~~involved in the transaction may provide the information required by~~
 43 ~~this subsection for a person described in subsection (b)(3)(A) that~~
 44 ~~serves as the principal broker for the person described in subsection~~
 45 ~~(b)(3)(B). In the case of a first lien purchase money mortgage~~
 46 ~~transaction, The closing agent shall determine the information~~
 47 ~~described in subsection (b)(8), and (b)(9), and (b)(10) from the HUD-1~~
 48 ~~settlement statement, or in the case of a transaction described in~~
 49 ~~subsection (a)(2), from the contract or any other document~~
 50 ~~executed by the parties in connection with the transaction.~~
- 51 (e) Except for a person described in subsection (b)(8), ~~or~~ (b)(9),

1 **(b)(10), or (b)(11)**, a person described in subsection (b) who fails to
 2 comply with subsection (d) is subject to a civil penalty of one hundred
 3 dollars (\$100) for each closing with respect to which the person fails
 4 to comply with subsection (d). The penalty:

5 (1) may be enforced by the state agency that has administrative
 6 jurisdiction over the person in the same manner that the agency
 7 enforces the payment of fees or other penalties payable to the
 8 agency; and

9 (2) shall be paid into the home ownership education account
 10 established by IC 5-20-1-27.

11 (f) Subject to subsection (g), the department shall make the
 12 information stored in the data base described in subsection (c)(2)(D)
 13 accessible to:

14 (1) each entity described in IC 4-6-12-4; and

15 (2) the homeowner protection unit established under IC 4-6-12-2.

16 (g) The department, a closing agent who submits a form under
 17 subsection (c), each entity described in IC 4-6-12-4, and the
 18 homeowner protection unit established under IC 4-6-12-2 shall exercise
 19 all necessary caution to avoid disclosure of any information:

20 (1) concerning a person described in subsection (b), including the
 21 person's license, registration, or certificate number; and

22 (2) contained in the data base described in subsection (c)(2)(D);
 23 except to the extent required or authorized by state or federal law.

24 (h) The department may adopt rules under IC 4-22-2, **including**
 25 **emergency rules under IC 4-22-2-37.1**, to implement this section.
 26 Rules adopted by the department under this subsection may establish
 27 procedures for the department to:

28 (1) establish;

29 (2) collect; and

30 (3) change as necessary;

31 an administrative fee to cover the department's expenses in establishing
 32 and maintaining the electronic system required by this section.

33 (i) If the department adopts a rule under IC 4-22-2 to establish an
 34 administrative fee to cover the department's expenses in establishing
 35 and maintaining the electronic system required by this section, as
 36 allowed under subsection (h), the department may:

37 (1) require the fee to be paid:

38 (A) to the closing agent responsible for inputting the
 39 information and submitting the form described in subsection
 40 (c)(2); and

41 (B) by the borrower, **the seller, or the buyer** in the
 42 transaction;

43 (2) allow the closing agent described in subdivision (1)(A) to
 44 retain a part of the fee collected to cover the closing agent's costs
 45 in inputting the information and submitting the form described in
 46 subsection (c)(2); and

47 (3) require the closing agent to pay the remainder of the fee
 48 collected to the department for deposit in the title insurance
 49 enforcement fund established by IC 27-7-3.6-1, for the
 50 department's use in establishing and maintaining the electronic
 51 system required by this section.

1 SECTION 29. IC 34-30-2-96.4 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2011]: **Sec. 96.4. IC 24-5-0.5-4(l) (Concerning**
 4 **certain practices governed by the federal Fair Debt Collection**
 5 **Practices Act (15 U.S.C. 1692 et seq.)).**

6 SECTION 30. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)]: **(a)**
 7 **Notwithstanding IC 25-35.6-1-8(b)(3), before amendment by this**
 8 **act on July 1, 2011, a speech-language pathologist is not required**
 9 **to hold a certificate of clinical competence in speech-language**
 10 **pathology or its equivalent issued by a nationally recognized**
 11 **association for speech-language and hearing to supervise**
 12 **speech-language pathology support personnel.**

13 **(b) This SECTION expires July 1, 2013.**

14 SECTION 31. [EFFECTIVE JULY 1, 2011] **(a) The Indiana**
 15 **professional licensing agency shall issue a license in**
 16 **speech-language pathology as follows:**

17 **(1) To each individual who applies for licensure and meets the**
 18 **following qualifications:**

19 **(A) Holds a license in speech and hearing therapy issued by**
 20 **the department of education.**

21 **(B) Has a master's degree in speech-language pathology or**
 22 **a related discipline.**

23 **(C) Has been employed as a speech-language pathologist**
 24 **for at least nine (9) months in the last five (5) years.**

25 **(2) To each individual who applies for licensure and meets all**
 26 **of the following qualifications:**

27 **(A) Holds a license in speech-language pathology issued by**
 28 **the department of education.**

29 **(B) Has:**

30 **(i) been employed as a speech-language pathologist for at**
 31 **least nine (9) months in the last five (5) years; or**

32 **(ii) taken at least thirty-six (36) hours of continuing**
 33 **education approved by the department of education or**
 34 **the health professions bureau after December 31, 2007,**
 35 **and before January 1, 2013.**

36 **(b) This SECTION expires July 1, 2013.**

37 SECTION 32. [EFFECTIVE JULY 1, 2010 (RETROACTIVE)]: **(a)**
 38 **880 IAC 1-2.1-9(i) is void.**

39 **(b) The publisher of the Indiana Administrative Code and**
 40 **Indiana Register shall remove 880 IAC 1-2.1-9(i) from the Indiana**
 41 **Administrative Code.**

42 **(c) This SECTION expires January 1, 2012.**

43 SECTION 33. **An emergency is declared for this act.**

(Reference is to EHB 1273 as reprinted April 6, 2011.)

Conference Committee Report
on
Engrossed House Bill 1273

Signed by:

Representative Koch
Chairperson

Senator Zakas

Representative Pryor

Senator Lanane

House Conferees

Senate Conferees