

HOUSE BILL No. 1370

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.7; IC 24-5.

Synopsis: Telephone privacy issues. Provides that: (1) a telephone solicitor who sells a telephone number listed in the do not call list; or (2) a person who knowingly purchases the telephone number; commits a deceptive act. Provides for partial payment of certain civil penalties to individuals who assist the attorney general in investigating certain deceptive acts. Adds: (1) telephone solicitation; (2) telecommunications service; and (3) IP-enabled service; to the definition of "consumer transaction" for purposes of the deceptive consumer sales act. Imposes a civil penalty of up to \$10,000 for a knowing or intentional violation of the federal Truth in Caller ID Act.

Effective: July 1, 2013.

Neese, Koch

January 22, 2013, read first time and referred to Committee on Judiciary.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1370



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 24-4.7-4-7 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2013]: **Sec. 7. (a) A telephone solicitor may not sell, transfer, or**
- 4 **make available to another person for solicitation purposes a**
- 5 **consumer's telephone number if:**
- 6 (1) the telephone number appears in the most current
- 7 quarterly listing published by the division; or
- 8 (2) the consumer has previously stated to the telephone
- 9 solicitor, and has not rescinded the statement, that the
- 10 consumer does not wish to receive telephone solicitations by
- 11 or on behalf of the telephone solicitor.
- 12 (b) A person may not:
- 13 (1) purchase, obtain, use, sell, or transfer a consumer's
- 14 telephone number, mailing address, or electronic mail
- 15 address, including by entering into a transaction with the
- 16 consumer for the sale of consumer goods or services, if:
- 17 (A) a telephone solicitor obtained or verified the telephone



- 1 **number, mailing address, or electronic mail address based**
- 2 **on a violation of this chapter, including during a telephone**
- 3 **solicitation that violates this chapter; and**
- 4 **(B) the person knows or should have known that a**
- 5 **telephone solicitor obtained or verified the telephone**
- 6 **number, mailing address, or electronic mail address based**
- 7 **on a violation of this chapter, including during a telephone**
- 8 **solicitation that violates this chapter; or**
- 9 **(2) provide assistance or support to a telephone solicitor if the**
- 10 **person knows or should have known that the telephone**
- 11 **solicitor is violating this chapter.**

12 SECTION 2. IC 24-4.7-5-1, AS AMENDED BY P.L.222-2005,
 13 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2013]: Sec. 1. A telephone solicitor **or person** who fails to
 15 comply with any provision of IC 24-4.7-4 commits a deceptive act that
 16 is actionable by the attorney general under this chapter. In addition, a
 17 contractor who contracts or seeks to contract with the state:

- 18 (1) may be prohibited from contracting with the state; or
 - 19 (2) may have an existing contract with the state voided;
- 20 if the contractor, an affiliate or principal of the contractor, or any agent
 21 acting on behalf of the contractor or an affiliate or principal of the
 22 contractor does not or has not complied with the terms of this article,
 23 even if this article is preempted by federal law.

24 SECTION 3. IC 24-4.7-5-2.5 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2013]: **Sec. 2.5. (a) Upon the request of the**
 27 **attorney general, a court may order that an amount of not more**
 28 **than ten percent (10%) of a civil penalty awarded and recovered**
 29 **under section 2(2) of this chapter be paid to an individual who:**

- 30 (1) reported to the attorney general alleged violations of this
 - 31 chapter; and
 - 32 (2) cooperated with the investigation of the alleged violations;
- 33 that resulted in the award of the civil penalty.
- 34 **(b) If a court orders payments under subsection (a) with respect**
 35 **to the same civil penalty to more than one (1) individual, the total**
 36 **amount of payments ordered to all individuals may not exceed ten**
 37 **percent (10%) of the civil penalty.**

38 SECTION 4. IC 24-5-0.5-2, AS AMENDED BY P.L.226-2011,
 39 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2013]: Sec. 2. (a) As used in this chapter:

- 41 (1) "Consumer transaction" means a sale, lease, assignment,
- 42 award by chance, or other disposition of an item of personal

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1 property, real property, a service, or an intangible, except
 2 securities and policies or contracts of insurance issued by
 3 corporations authorized to transact an insurance business under
 4 the laws of the state of Indiana, with or without an extension of
 5 credit, to a person for purposes that are primarily personal,
 6 familial, charitable, agricultural, or household, or a solicitation to
 7 supply any of these things. However, the term includes the
 8 following:

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

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

15 (C) Collecting or attempting to collect a debt owed or due, or
 16 asserted to be owed or due, to another person.

17 **(D) A telephone solicitation (as defined in 47 U.S.C.
 18 227(a)).**

19 **(E) A telecommunications service (as defined in 47 U.S.C.
 20 153).**

21 **(F) An offering of IP-enabled voice service (as defined in 47
 22 U.S.C. 615b(8)).**

23 (2) "Person" means an individual, corporation, the state of Indiana
 24 or its subdivisions or agencies, business trust, estate, trust,
 25 partnership, association, nonprofit corporation or organization, or
 26 cooperative or any other legal entity.

27 (3) "Supplier" means the following:

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

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

37 (C) A debt collector.

38 **(D) A person who provides, performs, engages in, or causes
 39 to be provided or performed:**

40 **(i) a telephone solicitation (as defined in 47 U.S.C.
 41 227(a));**

42 **(ii) a telecommunications service (as defined in 47 U.S.C.**

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- 1 **153); or**
 2 **(iii) an offering of IP-enabled voice service (as defined in**
 3 **47 U.S.C. 615b(8)).**
 4 (4) "Subject of a consumer transaction" means the personal
 5 property, real property, services, or intangibles offered or
 6 furnished in a consumer transaction.
 7 (5) "Cure" as applied to a deceptive act, means either:
 8 (A) to offer in writing to adjust or modify the consumer
 9 transaction to which the act relates to conform to the
 10 reasonable expectations of the consumer generated by such
 11 deceptive act and to perform such offer if accepted by the
 12 consumer; or
 13 (B) to offer in writing to rescind such consumer transaction
 14 and to perform such offer if accepted by the consumer.
 15 The term includes an offer in writing of one (1) or more items of
 16 value, including monetary compensation, that the supplier
 17 delivers to a consumer or a representative of the consumer if
 18 accepted by the consumer.
 19 (6) "Offer to cure" as applied to a deceptive act is a cure that:
 20 (A) is reasonably calculated to remedy a loss claimed by the
 21 consumer; and
 22 (B) includes a minimum additional amount that is the greater
 23 of:
 24 (i) ten percent (10%) of the value of the remedy under
 25 clause (A), but not more than four thousand dollars
 26 (\$4,000); or
 27 (ii) five hundred dollars (\$500);
 28 as compensation for attorney's fees, expenses, and other costs
 29 that a consumer may incur in relation to the deceptive act.
 30 (7) "Uncured deceptive act" means a deceptive act:
 31 (A) with respect to which a consumer who has been damaged
 32 by such act has given notice to the supplier under section 5(a)
 33 of this chapter; and
 34 (B) either:
 35 (i) no offer to cure has been made to such consumer within
 36 thirty (30) days after such notice; or
 37 (ii) the act has not been cured as to such consumer within a
 38 reasonable time after the consumer's acceptance of the offer
 39 to cure.
 40 (8) "Incurable deceptive act" means a deceptive act done by a
 41 supplier as part of a scheme, artifice, or device with intent to
 42 defraud or mislead. The term includes a failure of a transferee of

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1 structured settlement payment rights to timely provide a true and
 2 complete disclosure statement to a payee as provided under
 3 IC 34-50-2 in connection with a direct or indirect transfer of
 4 structured settlement payment rights.

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

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

15 (A) inducing or attempting to induce one (1) or more other
 16 persons to become participants in a pyramid promotional
 17 scheme; or

18 (B) assisting another in promoting a pyramid promotional
 19 scheme.

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

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

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

26 (B) an electronic signal received over a regular telephone line
 27 onto paper.

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

30 (A) property;

31 (B) goods; or

32 (C) services;

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

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

36 (15) "Debt collector" has the meaning set forth in 15 U.S.C.
 37 1692a(6). The term does not include a person admitted to the
 38 practice of law in Indiana if the person is acting within the course
 39 and scope of the person's practice as an attorney.

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

41 (1) "Directory assistance" means the disclosure of telephone
 42 number information in connection with an identified telephone

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- 1 service subscriber by means of a live operator or automated
 2 service.
- 3 (2) "Local telephone directory" refers to a telephone classified
 4 advertising directory or the business section of a telephone
 5 directory that is distributed by a telephone company or directory
 6 publisher to subscribers located in the local exchanges contained
 7 in the directory. The term includes a directory that includes
 8 listings of more than one (1) telephone company.
- 9 (3) "Local telephone number" refers to a telephone number that
 10 has the three (3) number prefix used by the provider of telephone
 11 service for telephones physically located within the area covered
 12 by the local telephone directory in which the number is listed. The
 13 term does not include long distance numbers or 800-, 888-, or
 14 900- exchange numbers listed in a local telephone directory.
- 15 SECTION 5. IC 24-5-0.5-3, AS AMENDED BY P.L.226-2011,
 16 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2013]: Sec. 3. (a) The following acts, and the following
 18 representations as to the subject matter of a consumer transaction,
 19 made orally, in writing, or by electronic communication, by a supplier,
 20 are deceptive acts:
- 21 (1) That such subject of a consumer transaction has sponsorship,
 22 approval, performance, characteristics, accessories, uses, or
 23 benefits it does not have which the supplier knows or should
 24 reasonably know it does not have.
- 25 (2) That such subject of a consumer transaction is of a particular
 26 standard, quality, grade, style, or model, if it is not and if the
 27 supplier knows or should reasonably know that it is not.
- 28 (3) That such subject of a consumer transaction is new or unused,
 29 if it is not and if the supplier knows or should reasonably know
 30 that it is not.
- 31 (4) That such subject of a consumer transaction will be supplied
 32 to the public in greater quantity than the supplier intends or
 33 reasonably expects.
- 34 (5) That replacement or repair constituting the subject of a
 35 consumer transaction is needed, if it is not and if the supplier
 36 knows or should reasonably know that it is not.
- 37 (6) That a specific price advantage exists as to such subject of a
 38 consumer transaction, if it does not and if the supplier knows or
 39 should reasonably know that it does not.
- 40 (7) That the supplier has a sponsorship, approval, or affiliation in
 41 such consumer transaction the supplier does not have, and which
 42 the supplier knows or should reasonably know that the supplier

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

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

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- 1 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
 2 rules or regulations issued under the federal Fair Debt Collection
 3 Practices Act (15 U.S.C. 1692 et seq.).
 4 (21) A violation of IC 24-5-7 (concerning health spa services), as
 5 set forth in IC 24-5-7-17.
 6 (22) A violation of IC 24-5-8 (concerning business opportunity
 7 transactions), as set forth in IC 24-5-8-20.
 8 (23) A violation of IC 24-5-10 (concerning home consumer
 9 transactions), as set forth in IC 24-5-10-18.
 10 (24) A violation of IC 24-5-11 (concerning home improvement
 11 contracts), as set forth in IC 24-5-11-14.
 12 (25) A violation of IC 24-5-12 (concerning telephone
 13 solicitations), as set forth in IC 24-5-12-23.
 14 (26) A violation of IC 24-5-13.5 (concerning buyback motor
 15 vehicles), as set forth in IC 24-5-13.5-14.
 16 (27) A violation of IC 24-5-14 (concerning automatic
 17 dialing-announcing devices), as set forth in IC 24-5-14-13.
 18 (28) A violation of IC 24-5-15 (concerning credit services
 19 organizations), as set forth in IC 24-5-15-11.
 20 (29) A violation of IC 24-5-16 (concerning unlawful motor
 21 vehicle subleasing), as set forth in IC 24-5-16-18.
 22 (30) A violation of IC 24-5-17 (concerning environmental
 23 marketing claims), as set forth in IC 24-5-17-14.
 24 (31) A violation of IC 24-5-19 (concerning deceptive commercial
 25 solicitation), as set forth in IC 24-5-19-11.
 26 (32) A violation of IC 24-5-21 (concerning prescription drug
 27 discount cards), as set forth in IC 24-5-21-7.
 28 (33) A violation of IC 24-5-23.5-7 (concerning real estate
 29 appraisals), as set forth in IC 24-5-23.5-9.
 30 (34) A violation of IC 24-5-26 (concerning identity theft), as set
 31 forth in IC 24-5-26-3.
 32 (35) A violation of IC 24-5-5 (concerning mortgage rescue fraud),
 33 as set forth in IC 24-5-5-6-1.
 34 (36) A violation of IC 24-8 (concerning promotional gifts and
 35 contests), as set forth in IC 24-8-6-3.
 36 **(37) The violation by a supplier of 47 U.S.C. 227(e), including**
 37 **any rules or regulations issued under 47 U.S.C. 227(e).**
 38 (b) Any representations on or within a product or its packaging or
 39 in advertising or promotional materials which would constitute a
 40 deceptive act shall be the deceptive act both of the supplier who places
 41 such representation thereon or therein, or who authored such materials,
 42 and such other suppliers who shall state orally or in writing that such

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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) and (a)(16), a telephone
20 company or other provider of a telephone directory or directory
21 assistance service or its officer or agent is immune from liability for
22 publishing the listing of a fictitious business name or assumed business
23 name of a supplier in its directory or directory assistance database
24 unless the telephone company or other provider of a telephone
25 directory or directory assistance service is the same person as the
26 supplier who has 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 6. IC 24-5-0.5-4, AS AMENDED BY P.L.226-2011,
32 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2013]: Sec. 4. (a) A person relying upon an uncured or
34 incurable deceptive act may bring an action for the damages actually
35 suffered as a consumer as a result of the deceptive act or five hundred
36 dollars (\$500), whichever is greater. The court may increase damages
37 for a willful deceptive act in an amount that does not exceed the greater
38 of:

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

42 Except as provided in subsection (j), the court may award reasonable

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1 attorney fees to the party that prevails in an action under this
 2 subsection. This subsection does not apply to a consumer transaction
 3 in real property, including a claim or action involving a construction
 4 defect (as defined in IC 32-27-3-1(5)) brought against a construction
 5 professional (as defined in IC 32-27-3-1(4)), except for purchases of
 6 time shares and camping club memberships. This subsection does not
 7 apply with respect to a deceptive act described in section 3(a)(20) of
 8 this chapter. This subsection also does not apply to a violation of
 9 IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a
 10 person under this section have priority over any civil penalty imposed
 11 under this chapter.

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

34 (c) The attorney general may bring an action to enjoin a deceptive
 35 act, including a deceptive act described in section 3(a)(20) of this
 36 chapter, notwithstanding subsections (a) and (b). However, the attorney
 37 general may seek to enjoin patterns of incurable deceptive acts with
 38 respect to consumer transactions in real property. In addition, the court
 39 may:

- 40 (1) issue an injunction;
- 41 (2) order the supplier to make payment of the money unlawfully
- 42 received from the aggrieved consumers to be held in escrow for

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1 distribution to aggrieved consumers;

2 (3) order the supplier to pay to the state the reasonable costs of
3 the attorney general's investigation and prosecution related to the
4 action; and

5 (4) provide for the appointment of a receiver.

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

9 (e) In any action under subsection (a) or (b), upon the filing of the
10 complaint or on the appearance of any defendant, claimant, or any
11 other party, or at any later time, the trial court, the supreme court, or the
12 court of appeals may require the plaintiff, defendant, claimant, or any
13 other party or parties to give security, or additional security, in such
14 sum as the court shall direct to pay all costs, expenses, and
15 disbursements that shall be awarded against that party or which that
16 party may be directed to pay by any interlocutory order by the final
17 judgment or on appeal.

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

27 (g) If a court finds any person has knowingly violated section 3 or
28 10 of this chapter, other than section 3(a)(19), ~~or 3(a)(20)~~, **or 3(a)(27)**
29 of this chapter, the attorney general, in an action pursuant to subsection
30 (c), may recover from the person on behalf of the state a civil penalty
31 of a fine not exceeding five thousand dollars (\$5,000) per violation.

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

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

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

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

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

4 (j) An offer to cure is:

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

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

12 If the offer to cure is timely delivered by the supplier, the supplier may
13 submit the offer to cure as evidence to prove in the proceeding in
14 accordance with the Indiana Rules of Trial Procedure that the supplier
15 made an offer to cure.

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

21 (l) If a court finds that a person has knowingly violated section
22 3(a)(20) of this chapter, the attorney general, in an action under
23 subsection (c), may recover from the person on behalf of the state a
24 civil penalty not exceeding one thousand dollars (\$1,000) per
25 consumer. In determining the amount of the civil penalty in any action
26 by the attorney general under this subsection, the court shall consider,
27 among other relevant factors, the frequency and persistence of
28 noncompliance by the debt collector, the nature of the noncompliance,
29 and the extent to which the noncompliance was intentional. A person
30 may not be held liable in any action by the attorney general for a
31 violation of section 3(a)(20) of this chapter if the person shows by a
32 preponderance of evidence that the violation was not intentional and
33 resulted from a bona fide error, notwithstanding the maintenance of
34 procedures reasonably adapted to avoid the error. A person may not be
35 held liable in any action for a violation of this chapter for contacting a
36 person other than the debtor, if the contact is made in compliance with
37 the Fair Debt Collection Practices Act.

38 **(m) If a court finds that a person has knowingly or intentionally**
39 **violated section 3(a)(37) of this chapter, the attorney general, in an**
40 **action under subsection (c), may recover from the person on behalf**
41 **of the state a civil penalty of not more than ten thousand dollars**
42 **(\$10,000) per violation. A civil penalty recovered under this**

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1 subsection shall be deposited in the consumer protection division
2 telephone solicitation fund established by IC 24-4.7-3-6 to be used
3 for the administration and enforcement of section 3(a)(37) of this
4 chapter.

5 SECTION 7. IC 24-5-14-2 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. As used in this
7 chapter, "caller" means an individual, corporation, limited liability
8 company, partnership, unincorporated association, or the entity that:

- 9 (1) attempts to contact; or
- 10 (2) contacts;
- 11 (3) causes another person to attempt to contact; or
- 12 (4) causes another person to contact;

13 a subscriber in Indiana by using a telephone or telephone line.

14 SECTION 8. IC 24-5-14-14 IS ADDED TO THE INDIANA CODE
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2013]: Sec. 14. (a) Upon the request of the attorney general, a
17 court may order that an amount of not more than ten percent
18 (10%) of a civil penalty awarded and recovered under section 13
19 of this chapter be paid to an individual who:

- 20 (1) reported to the attorney general alleged violations of this
- 21 chapter; and
- 22 (2) cooperated with the investigation of the alleged violations;
- 23 that resulted in the award of the civil penalty.

24 (b) If a court orders payments under subsection (a) with respect
25 to the same civil penalty to more than one (1) individual, the total
26 amount of payments ordered to all individuals may not exceed ten
27 percent (10%) of the civil penalty.

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