



Reprinted
January 28, 2020

HOUSE BILL No. 1181

DIGEST OF HB 1181 (Updated January 27, 2020 5:43 pm - DI 134)

Citations Affected: IC 24-5.

Synopsis: Gift certificates and store gift cards. Provides that, after June 30, 2020, a person shall not sell or issue to an Indiana consumer any gift certificate or store gift card with an expiration date unless certain conditions are met. Provides that, with respect to a gift certificate or a store gift card that is sold or issued to an Indiana consumer after June 30, 2020, if at any time after the gift certificate or store gift card is issued or sold: (1) the merchant for which the gift certificate or store gift card was originally sold or issued: (A) for any reason ceases to do business in Indiana; or (B) for any reason: (i) substantially changes; or (ii) ceases to offer; the types of goods or services that were offered to consumers at the time the gift certificate or store gift card was originally sold or issued; and (2) any expiration date: (A) authorized under the bill's provisions; and (B) applicable to the gift certificate or store gift card (or to the underlying funds associated with either) has not elapsed; the merchant for which the gift certificate or store gift card was originally sold or issued shall, upon the request of an Indiana consumer who is the rightful holder of the gift certificate or store gift card, promptly refund to the holder the balance of the underlying funds or provide the holder with the remaining balance in some other manner. Provides that a person that violates the bill's provisions: (1) commits a deceptive act that is actionable by an aggrieved consumer and the attorney general under the deceptive consumer sales act; and (2) is subject to the penalties and remedies set forth in the deceptive consumer sales act. Authorizes the attorney general to adopt rules to implement these provisions.

Effective: July 1, 2020.

Cook, Morris

January 13, 2020, read first time and referred to Committee on Commerce, Small Business and Economic Development.
January 23, 2020, amended, reported — Do Pass.
January 27, 2020, read second time, amended, ordered engrossed.

HB 1181—LS 7149/DI 101



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Second Regular Session of the 121st General Assembly (2020)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1181

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

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.211-2019,
2 SECTION 33, AND AS AMENDED BY P.L.242-2019, SECTION 6,
3 AND AS AMENDED BY THE TECHNICAL CORRECTIONS BILL
4 OF THE 2020 GENERAL ASSEMBLY, IS CORRECTED AND
5 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:
6 Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive
7 act, omission, or practice in connection with a consumer transaction.
8 Such an act, omission, or practice by a supplier is a violation of this
9 chapter whether it occurs before, during, or after the transaction. An
10 act, omission, or practice prohibited by this section includes both
11 implicit and explicit misrepresentations.

12 (b) Without limiting the scope of subsection (a), the following acts,
13 and the following representations as to the subject matter of a
14 consumer transaction, made orally, in writing, or by electronic
15 communication, by a supplier, are deceptive acts:

16 (1) That such subject of a consumer transaction has sponsorship,
17 approval, performance, characteristics, accessories, uses, or

HB 1181—LS 7149/DI 101



- 1 benefits it does not have which the supplier knows or should
2 reasonably know it does not have.
- 3 (2) That such subject of a consumer transaction is of a particular
4 standard, quality, grade, style, or model, if it is not and if the
5 supplier knows or should reasonably know that it is not.
- 6 (3) That such subject of a consumer transaction is new or unused,
7 if it is not and if the supplier knows or should reasonably know
8 that it is not.
- 9 (4) That such subject of a consumer transaction will be supplied
10 to the public in greater quantity than the supplier intends or
11 reasonably expects.
- 12 (5) That replacement or repair constituting the subject of a
13 consumer transaction is needed, if it is not and if the supplier
14 knows or should reasonably know that it is not.
- 15 (6) That a specific price advantage exists as to such subject of a
16 consumer transaction, if it does not and if the supplier knows or
17 should reasonably know that it does not.
- 18 (7) That the supplier has a sponsorship, approval, or affiliation in
19 such consumer transaction the supplier does not have, and which
20 the supplier knows or should reasonably know that the supplier
21 does not have.
- 22 (8) That such consumer transaction involves or does not involve
23 a warranty, a disclaimer of warranties, or other rights, remedies,
24 or obligations, if the representation is false and if the supplier
25 knows or should reasonably know that the representation is false.
- 26 (9) That the consumer will receive a rebate, discount, or other
27 benefit as an inducement for entering into a sale or lease in return
28 for giving the supplier the names of prospective consumers or
29 otherwise helping the supplier to enter into other consumer
30 transactions, if earning the benefit, rebate, or discount is
31 contingent upon the occurrence of an event subsequent to the time
32 the consumer agrees to the purchase or lease.
- 33 (10) That the supplier is able to deliver or complete the subject of
34 the consumer transaction within a stated period of time, when the
35 supplier knows or should reasonably know the supplier could not.
36 If no time period has been stated by the supplier, there is a
37 presumption that the supplier has represented that the supplier
38 will deliver or complete the subject of the consumer transaction
39 within a reasonable time, according to the course of dealing or the
40 usage of the trade.
- 41 (11) That the consumer will be able to purchase the subject of the
42 consumer transaction as advertised by the supplier, if the supplier



- 1 does not intend to sell it.
- 2 (12) That the replacement or repair constituting the subject of a
 3 consumer transaction can be made by the supplier for the estimate
 4 the supplier gives a customer for the replacement or repair, if the
 5 specified work is completed and:
- 6 (A) the cost exceeds the estimate by an amount equal to or
 7 greater than ten percent (10%) of the estimate;
 - 8 (B) the supplier did not obtain written permission from the
 9 customer to authorize the supplier to complete the work even
 10 if the cost would exceed the amounts specified in clause (A);
 - 11 (C) the total cost for services and parts for a single transaction
 12 is more than seven hundred fifty dollars (\$750); and
 - 13 (D) the supplier knew or reasonably should have known that
 14 the cost would exceed the estimate in the amounts specified in
 15 clause (A).
- 16 (13) That the replacement or repair constituting the subject of a
 17 consumer transaction is needed, and that the supplier disposes of
 18 the part repaired or replaced earlier than seventy-two (72) hours
 19 after both:
- 20 (A) the customer has been notified that the work has been
 21 completed; and
 - 22 (B) the part repaired or replaced has been made available for
 23 examination upon the request of the customer.
- 24 (14) Engaging in the replacement or repair of the subject of a
 25 consumer transaction if the consumer has not authorized the
 26 replacement or repair, and if the supplier knows or should
 27 reasonably know that it is not authorized.
- 28 (15) The act of misrepresenting the geographic location of the
 29 supplier by listing an alternate business name or an assumed
 30 business name (as described in IC 23-0.5-3-4) in a local telephone
 31 directory if:
- 32 (A) the name misrepresents the supplier's geographic location;
 - 33 (B) the listing fails to identify the locality and state of the
 34 supplier's business;
 - 35 (C) calls to the local telephone number are routinely forwarded
 36 or otherwise transferred to a supplier's business location that
 37 is outside the calling area covered by the local telephone
 38 directory; and
 - 39 (D) the supplier's business location is located in a county that
 40 is not contiguous to a county in the calling area covered by the
 41 local telephone directory.
- 42 (16) The act of listing an alternate business name or assumed



- 1 business name (as described in IC 23-0.5-3-4) in a directory
 2 assistance data base if:
- 3 (A) the name misrepresents the supplier's geographic location;
 - 4 (B) calls to the local telephone number are routinely forwarded
 5 or otherwise transferred to a supplier's business location that
 6 is outside the local calling area; and
 - 7 (C) the supplier's business location is located in a county that
 8 is not contiguous to a county in the local calling area.
- 9 (17) The violation by a supplier of IC 24-3-4 concerning
 10 cigarettes for import or export.
- 11 (18) The act of a supplier in knowingly selling or reselling a
 12 product to a consumer if the product has been recalled, whether
 13 by the order of a court or a regulatory body, or voluntarily by the
 14 manufacturer, distributor, or retailer, unless the product has been
 15 repaired or modified to correct the defect that was the subject of
 16 the recall.
- 17 (19) The violation by a supplier of 47 U.S.C. 227, including any
 18 rules or regulations issued under 47 U.S.C. 227.
- 19 (20) The violation by a supplier of the federal Fair Debt
 20 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
 21 rules or regulations issued under the federal Fair Debt Collection
 22 Practices Act (15 U.S.C. 1692 et seq.).
- 23 (21) A violation of IC 24-5-7 (concerning health spa services), as
 24 set forth in IC 24-5-7-17.
- 25 (22) A violation of IC 24-5-8 (concerning business opportunity
 26 transactions), as set forth in IC 24-5-8-20.
- 27 (23) A violation of IC 24-5-10 (concerning home consumer
 28 transactions), as set forth in IC 24-5-10-18.
- 29 (24) A violation of IC 24-5-11 (concerning real property
 30 improvement contracts), as set forth in IC 24-5-11-14.
- 31 (25) A violation of IC 24-5-12 (concerning telephone
 32 solicitations), as set forth in IC 24-5-12-23.
- 33 (26) A violation of IC 24-5-13.5 (concerning buyback motor
 34 vehicles), as set forth in IC 24-5-13.5-14.
- 35 (27) A violation of IC 24-5-14 (concerning automatic
 36 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 37 (28) A violation of IC 24-5-15 (concerning credit services
 38 organizations), as set forth in IC 24-5-15-11.
- 39 (29) A violation of IC 24-5-16 (concerning unlawful motor
 40 vehicle subleasing), as set forth in IC 24-5-16-18.
- 41 (30) A violation of IC 24-5-17 (concerning environmental
 42 marketing claims), as set forth in IC 24-5-17-14.



- 1 (31) A violation of IC 24-5-19 (concerning deceptive commercial
2 solicitation), as set forth in IC 24-5-19-11.
- 3 (32) A violation of IC 24-5-21 (concerning prescription drug
4 discount cards), as set forth in IC 24-5-21-7.
- 5 (33) A violation of IC 24-5-23.5-7 (concerning real estate
6 appraisals), as set forth in IC 24-5-23.5-9.
- 7 (34) A violation of IC 24-5-26 (concerning identity theft), as set
8 forth in IC 24-5-26-3.
- 9 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
10 as set forth in IC 24-5.5-6-1.
- 11 (36) A violation of IC 24-8 (concerning promotional gifts and
12 contests), as set forth in IC 24-8-6-3.
- 13 (37) A violation of IC 21-18.5-6 (concerning representations
14 made by a postsecondary credit bearing proprietary educational
15 institution), as set forth in IC 21-18.5-6-22.5.
- 16 *(38) A violation of IC 24-5-15.5 (concerning collection actions of
17 a plaintiff debt buyer), as set forth in IC 24-5-15.5-6.*
- 18 ~~(38)~~ (39) A violation of IC 24-14 (concerning towing services), as
19 set forth in IC 24-14-10-1.
- 20 ~~(38)~~ **(40) A violation of IC 24-5-14.5 (concerning misleading or
21 inaccurate caller identification information), as set forth in
22 IC 24-5-14.5-12.**
- 23 **(41) A violation of IC 24-5-27-5 or IC 24-5-27-6 (concerning
24 gift certificates and store gift cards), as set forth in
25 IC 24-5-27-7.**
- 26 (c) Any representations on or within a product or its packaging or
27 in advertising or promotional materials which would constitute a
28 deceptive act shall be the deceptive act both of the supplier who places
29 such representation thereon or therein, or who authored such materials,
30 and such other suppliers who shall state orally or in writing that such
31 representation is true if such other supplier shall know or have reason
32 to know that such representation was false.
- 33 (d) If a supplier shows by a preponderance of the evidence that an
34 act resulted from a bona fide error notwithstanding the maintenance of
35 procedures reasonably adopted to avoid the error, such act shall not be
36 deceptive within the meaning of this chapter.
- 37 (e) It shall be a defense to any action brought under this chapter that
38 the representation constituting an alleged deceptive act was one made
39 in good faith by the supplier without knowledge of its falsity and in
40 reliance upon the oral or written representations of the manufacturer,
41 the person from whom the supplier acquired the product, any testing
42 organization, or any other person provided that the source thereof is



1 disclosed to the consumer.

2 (f) For purposes of subsection (b)(12), a supplier that provides
3 estimates before performing repair or replacement work for a customer
4 shall give the customer a written estimate itemizing as closely as
5 possible the price for labor and parts necessary for the specific job
6 before commencing the work.

7 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
8 company or other provider of a telephone directory or directory
9 assistance service or its officer or agent is immune from liability for
10 publishing the listing of an alternate business name or assumed
11 business name of a supplier in its directory or directory assistance data
12 base unless the telephone company or other provider of a telephone
13 directory or directory assistance service is the same person as the
14 supplier who has committed the deceptive act.

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

19 SECTION 2. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS
20 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2020]:

22 **Chapter 27. Gift Certificates and Store Gift Cards**

23 **Sec. 1. Subject to section 4 of this chapter, as used in this**
24 **chapter, "gift certificate" means a certificate, a card, a code, or**
25 **another device that:**

26 (1) **is issued to a consumer:**

27 (A) **on a prepaid basis in exchange for payment;**

28 (B) **primarily for personal, family, or household purposes;**

29 **and**

30 (C) **in a specified amount that may not be increased or**
31 **reloaded; and**

32 (2) **is redeemable upon presentation at a single merchant or**
33 **at an affiliated group of merchants for goods or services.**

34 **Sec. 2. As used in this chapter, "Indiana consumer" means an**
35 **individual whose principal residence is in Indiana.**

36 **Sec. 3. Subject to section 4 of this chapter, as used in this**
37 **chapter, "store gift card" means a certificate, a card, a code, or**
38 **another device that:**

39 (1) **is issued to a consumer:**

40 (A) **on a prepaid basis in exchange for payment;**

41 (B) **primarily for personal, family, or household purposes;**

42 **and**



- 1 (C) in a specified amount, regardless of whether that
2 amount may be increased or reloaded; and
3 (2) is redeemable upon presentation at a single merchant or
4 at an affiliated group of merchants for goods or services.
- 5 **Sec. 4. For purposes of this chapter, the terms "gift certificate"**
6 **and "store gift card" do not include any certificate, card, code, or**
7 **other device that is:**
- 8 (1) useable solely for communications service (as defined in
9 IC 8-1-32.5-3);
10 (2) reloadable and not marketed or labeled as a gift card or
11 gift certificate;
12 (3) a loyalty, award, or promotional gift card (as defined in 12
13 CFR 1005.20);
14 (4) not marketed to the general public; or
15 (5) redeemable solely:
16 (A) for admission to events or venues at a particular
17 location or group of affiliated locations; or
18 (B) to obtain goods or services in conjunction with
19 admission to the events or venues, either at the event or
20 venue or at specific locations affiliated with and in
21 geographic proximity to the event or venue.
- 22 **Sec. 5. After June 30, 2020, a person shall not sell or issue to an**
23 **Indiana consumer any gift certificate with an expiration date, or**
24 **any store gift card with an expiration date, unless the following**
25 **conditions are satisfied:**
- 26 (1) The person has established policies and procedures to
27 provide consumers with a reasonable opportunity to purchase
28 a gift certificate or a store gift card with at least five (5) years
29 remaining until the expiration date of the gift certificate or
30 store gift card.
31 (2) The expiration date for the underlying funds is at least the
32 later of:
33 (A) five (5) years after:
34 (i) the date the gift certificate was initially issued; or
35 (ii) the date on which funds were last loaded to the store
36 gift card; or
37 (B) the expiration date, if any, of the gift certificate or store
38 gift card.
39 (3) The following disclosures are provided on the gift
40 certificate or store gift card, as applicable:
41 (A) The expiration date for the underlying funds or, if the
42 underlying funds do not expire, a statement of that fact.



1 (B) A toll-free telephone number and, if maintained, an
 2 Internet web site address that a consumer may use to
 3 obtain:

4 (i) a replacement gift certificate; or

5 (ii) a replacement store gift card;

6 after the gift certificate or store gift card expires, if the
 7 underlying funds may be available to the consumer.

8 (C) Except in the case of a gift certificate or, if
 9 nonreloadable, a store gift card that bears an expiration
 10 date that is at least seven (7) years from the date of
 11 issuance, a statement:

12 (i) that the gift certificate or store gift card expires, but
 13 that the underlying funds either do not expire or expire
 14 later than the gift certificate or store gift card; and

15 (ii) the consumer may contact the issuer for a
 16 replacement gift certificate or store gift card.

17 The statement required by this clause must be disclosed
 18 with equal prominence and in close proximity to the
 19 expiration date of the gift certificate or store gift card.

20 For purposes of this subdivision, a disclosure made in an
 21 accompanying terms and conditions document, on packaging
 22 surrounding a gift certificate or store gift card, or on a sticker
 23 or other label affixed to the gift certificate or store gift card
 24 do not constitute disclosure on the gift certificate or store gift
 25 card. For an electronic gift certificate or store gift card,
 26 disclosures must be provided electronically on the gift
 27 certificate or store gift card provided to the consumer. An
 28 issuer that provides a code or confirmation to a consumer
 29 orally must provide to the consumer a written or an electronic
 30 copy of the code or confirmation promptly, and the applicable
 31 disclosures required by this subdivision must be provided on
 32 the written or electronic copy of the code or confirmation.

33 (4) A fee or charge is not imposed on the consumer for:

34 (A) replacing the gift certificate or store gift card; or

35 (B) providing the consumer with the remaining balance in
 36 some other manner before the expiration date of the
 37 underlying funds;

38 unless the gift certificate or store gift card has been lost or
 39 stolen.

40 Sec. 6. (a) This section applies to a gift certificate or a store gift
 41 card that is sold or issued to an Indiana consumer after June 30,
 42 2020.



1 (b) As used in this section, "merchant" refers to:

- 2 (1) the merchant;
 3 (2) the group of affiliated merchants; or
 4 (3) the successors or assigns of the merchant or the group of
 5 affiliated merchants;

6 as applicable, for which a gift certificate or a store gift card was
 7 originally sold or issued to an Indiana consumer.

8 (c) If at any time after a gift certificate or a store gift card is
 9 issued or sold to an Indiana consumer:

10 (1) the merchant for which the gift certificate or store gift
 11 card was originally sold or issued:

12 (A) for any reason ceases to do business in Indiana; or

13 (B) for any reason:

14 (i) substantially changes; or

15 (ii) ceases to offer;

16 the types of goods or services that were offered to
 17 consumers at the time the gift certificate or store gift card
 18 was originally sold or issued; and

19 (2) any expiration date:

20 (A) authorized under section 5 of this chapter; and

21 (B) applicable to the gift certificate or store gift card, or to
 22 the underlying funds associated with the gift certificate or
 23 store gift card;

24 has not elapsed;

25 the merchant for which the gift certificate or store gift card was
 26 originally sold or issued shall, upon the request of an Indiana
 27 consumer who is the rightful holder of the gift certificate or store
 28 gift card, promptly (but in no case later than the expiration date,
 29 if any, of the underlying funds) refund to the holder the balance of
 30 the underlying funds or provide the holder with the remaining
 31 balance in some other manner, as disclosed at the time of sale or
 32 issuance to the Indiana consumer to whom the gift certificate or
 33 store gift card was originally sold or issued.

34 Sec. 7. (a) A person that violates section 5 or 6 of this chapter:

35 (1) commits a deceptive act that is actionable by an aggrieved
 36 Indiana consumer and the attorney general under
 37 IC 24-5-0.5-4; and

38 (2) is subject to the penalties and remedies set forth in
 39 IC 24-5-0.5.

40 An action by the attorney general for violations of this chapter may
 41 be brought in the circuit or superior court of Marion County.

42 (b) The remedies and penalties set forth in this section are



1 cumulative and are supplemental to any other remedies and
2 penalties available under any other state or federal law, rule, or
3 regulation for a violation of section 5 or 6 of this chapter.
4 Sec. 8. This chapter does not void or affect the terms and
5 conditions of:
6 (1) a gift certificate; or
7 (2) a store gift card;
8 that is sold or issued to an Indiana consumer before July 1, 2020.
9 Sec. 9. The attorney general may adopt rules under IC 4-22-2 to
10 implement this chapter, including emergency rules in the manner
11 provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an
12 emergency rule adopted by the attorney general under this
13 subsection and in the manner provided by IC 4-22-2-37.1 expires
14 on the date on which a rule that supersedes the emergency rule is
15 adopted by the attorney general under IC 4-22-2-24 through
16 IC 4-22-2-36.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred House Bill 1181, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 10, after line 16, begin a new paragraph and insert:

"SECTION 3. IC 34-55-8-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 7.5. (a) If a judgment debtor voluntarily or involuntarily leaves employment with an employer that is garnishing the judgment debtor's wages or salary pursuant to a garnishment order, the judgment debtor shall not later than thirty (30) days after the judgment debtor's last day of employment notify the court and the judgment creditor of the following:**

- (1) That the judgment debtor is no longer employed with the employer.**
- (2) That the employer will no longer have access to the judgment debtor's income.**
- (3) The name, address, and telephone number of the judgment debtor's new employer, if any.**
- (4) Information regarding any other wages, salary, or other income being received by the judgment debtor.**

(b) A judgment debtor described in subsection (a) shall immediately notify the judgment debtor's new employer, if any, of any garnishment described in subsection (a).

(c) If:

- (1) a judgment debtor leaves employment with an employer that is garnishing the judgment debtor's wages or salary pursuant to a garnishment order;**
- (2) the judgment debtor subsequently becomes employed with a new employer or returns to employment with the employer that was previously garnishing the judgment debtor's wages or salary; and**
- (3) the obligation that is the subject of the garnishment has not been satisfied;**

the judgment creditor must obtain a new garnishment order before the employer of the judgment debtor is required to begin or resume garnishment of the wages of the judgment debtor.

(d) A judgment debtor who knowingly or intentionally fails to comply with subsection (a) or (b) commits a Class C infraction."



Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1181 as introduced.)

MORRIS

Committee Vote: yeas 10, nays 1.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1181 be amended to read as follows:

Page 10, delete lines 17 through 42.

Delete page 11.

Renumber all SECTIONS consecutively.

(Reference is to HB 1181 as printed January 24, 2020.)

COOK

