

HOUSE BILL No. 1342

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9-14; IC 24-4-24; IC 24-5-0.5.

Synopsis: Consumer genetic testing providers. Provides that a person may not discriminate against an individual on the basis of the individual's solicitation and use of consumer genetic testing services or on the basis of the results of genetic testing performed by a provider of consumer genetic testing services (provider). Requires a provider to disclose specified information to an individual who submits biological material to the provider for genetic testing. Prohibits a provider that performs, or causes to be performed, genetic testing on an individual's biological material from: (1) taking specified actions with regard to: (A) the biological material; or (B) data resulting from genetic testing performed on the biological material; unless the provider has solicited and received the individual's consent to the action; or (2) providing data, other than deidentified data, resulting from genetic testing performed on the individual's biological material to: (A) an insurer; (B) a business that provides information or data to insurers for the purposes of underwriting or rating of risks; or (C) the individual's employer. Imposes specified requirements on a provider with respect to: (1) controlling access to an individual's biological material and data; (2) complying with the individual's revocation of consent with regard to the individual's biological material and data; and (3) marketing or advertising sent to the individual as a result of the individual's solicitation and use of the provider's services or use of the provider's website or other remote or virtual services. Provides that a consumer genetic testing provider may not charge a fee for the provision of biological material or for the provision of data resulting from genetic testing performed on biological material: (1) to a law enforcement
(Continued next page)

Effective: July 1, 2024.

Pierce K, Miller K, Teshka

January 10, 2024, read first time and referred to Committee on Commerce, Small Business and Economic Development.



Digest Continued

agency; or (2) as required by a court order; that is more than the provider's actual cost of providing the material or data. Provides that the attorney general may bring an enforcement action against a provider and specifies penalties for both negligent violations and willful violations.



Introduced

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1342



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 22-9-14 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2024]:
 4 **Chapter 14. Genetic Discrimination**
 5 **Sec. 1. The definitions in IC 24-4-24 apply throughout this**
 6 **chapter.**
 7 **Sec. 2. A person may not discriminate against an individual on**
 8 **the basis of the individual's solicitation and use of consumer**
 9 **genetic testing services or on the basis of the results of genetic**
 10 **testing performed by a consumer genetic testing provider,**
 11 **including by discriminating against the individual in any of the**
 12 **following ways:**
 13 (1) **Denying the individual access to the person's goods or**
 14 **services.**
 15 (2) **Charging the individual a different rate for the person's**



1 goods or services.

2 (3) Suggesting that the individual will be subject to any of the
3 measures described in subdivisions (1) through (2).

4 SECTION 2. IC 24-4-24 IS ADDED TO THE INDIANA CODE AS
5 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2024]:

7 **Chapter 24. Consumer Genetic Testing Providers**

8 **Sec. 1. (a) As used in this chapter, "consumer genetic testing"**
9 **means a service in which a person:**

10 (1) provides an individual with a means of submitting a
11 sample of the individual's biological material directly to the
12 person;

13 (2) performs, or causes to be performed, genetic testing on the
14 submitted biological material; and

15 (3) returns the results of the genetic testing directly to the
16 individual.

17 (b) The term does not include genetic testing:

18 (1) of biological material of a patient of a health care provider
19 (as defined in IC 16-18-2-163(a)), the collection and testing of
20 which is:

21 (A) performed at the request or direction of the health care
22 provider for the purpose of the diagnosis, cure, mitigation,
23 treatment, or prevention of a physical or mental illness,
24 injury, disease, disorder, or disability; and

25 (B) subject to the Health Insurance Portability and
26 Accountability Act (HIPAA) (P.L. 104-191);

27 (2) performed as required by a court order;

28 (3) performed for purposes of a law enforcement investigation
29 at the request or direction of a law enforcement agency;

30 (4) performed at the request or direction of a coroner or
31 medical examiner for purposes of investigating the cause of an
32 individual's death; or

33 (5) performed for purposes of research (as defined in 45 CFR
34 164.501) that is subject to:

35 (A) 21 CFR Parts 50 and 56; or

36 (B) 45 CFR Part 46.

37 **Sec. 2. As used in this chapter, "consumer genetic testing**
38 **provider" or "provider" means a person that, in the ordinary**
39 **course of the person's business, offers consumer genetic testing in**
40 **exchange for consideration.**

41 **Sec. 3. As used in this chapter, "deidentified data" means data**
42 **that cannot reasonably be used to infer information about, or**



1 otherwise be linked to, an identifiable consumer, and that is subject
2 to:

- 3 (1) administrative and technical measures to ensure that the
4 data cannot be associated with a particular consumer;
5 (2) public commitment by the holder of the data to:
6 (A) maintain and use the data in deidentified form; and
7 (B) not attempt to reidentify the data; and
8 (3) legally enforceable contractual obligations that prohibit
9 any recipients of the data from attempting to reidentify the
10 data.

11 Sec. 4. As used in this chapter, "DNA" has the meaning set forth
12 in IC 10-13-6-2.

13 Sec. 5. As used in this chapter, "genetic testing" means analysis
14 of:

- 15 (1) the complete DNA;
16 (2) regions of the DNA;
17 (3) chromosomes;
18 (4) genes; or
19 (5) gene products;

20 of an individual for the purpose of determining the individual's
21 genetic characteristics.

22 Sec. 6. As used in this chapter, "insurer" has the meaning set
23 forth in IC 27-1-2-3.

24 Sec. 7. (a) A consumer genetic testing provider may not
25 perform, or cause to be performed, genetic testing on an
26 individual's biological material unless the provider has:

- 27 (1) provided the individual with; and
28 (2) received affirmative confirmation from the individual of
29 the individual's receipt of;

30 a written disclosure of the provider's privacy policy, including the
31 provider's policies and procedures regarding the provider's
32 collection, maintenance, security, retention, and use of both
33 biological material sent to the provider and data resulting from
34 genetic testing performed on the biological material.

35 (b) The disclosure under subsection (a) must include complete
36 information regarding the following:

- 37 (1) If a third party performs genetic testing on biological
38 material sent to the provider, the identity of the third party.
39 (2) The manner in which:
40 (A) biological material sent to the provider; and
41 (B) data resulting from genetic testing performed on
42 biological material sent to the provider;



1 is stored, transferred, and secured.

2 (3) Any:

3 (A) testing or analysis that the provider performs, or
4 causes to be performed on; or

5 (B) other purpose for which the provider uses;
6 biological material sent by an individual to the provider that
7 is in addition to the genetic testing requested by the
8 individual.

9 (4) The:

10 (A) identity of any third party to which the provider
11 provides access to:

12 (i) biological material sent to the provider; or

13 (ii) data resulting from genetic testing performed on
14 biological material sent to the provider; and

15 (B) purpose for which the third party uses the biological
16 material or data.

17 (c) A consumer genetic testing provider shall:

18 (1) publish the disclosure described in subsection (a) on the
19 provider's website; and

20 (2) include on the provider's website prominent directions and
21 hyperlinks to the location of the disclosure on the provider's
22 website.

23 **Sec. 8. (a) A consumer genetic testing provider that performs,
24 or causes to be performed, genetic testing on an individual's
25 biological material may not take any of the following actions unless
26 the provider has solicited and received the individual's freely given,
27 specific, informed, and unambiguous consent to the action:**

28 (1) Perform, or cause to be performed, any testing or analysis
29 of the individual's biological material that is not requested by
30 the individual except as required to comply with state and
31 federal law.

32 (2) Use the individual's biological material for any use other
33 than the genetic testing requested by the individual.

34 (3) Provide access by a third party to:

35 (A) the individual's biological material; or

36 (B) data, other than deidentified data, resulting from
37 genetic testing performed on the individual's biological
38 material.

39 (4) Retain the individual's biological material for more than
40 thirty (30) days after the performance of the genetic testing
41 requested by the individual.

42 (5) Retain data, other than deidentified data, resulting from



1 genetic testing performed on the individual's biological
 2 material for more than thirty (30) days after the provider
 3 provides the data to the individual except as required to
 4 comply with state and federal law.

5 (6) Disseminate advertising or marketing communications to
 6 the individual or provide information regarding the
 7 individual's:

8 (A) solicitation and use of the provider's services; or

9 (B) use of the provider's website or other remote or virtual
 10 services;

11 to a third party to enable the third party to disseminate
 12 advertising or marketing communications to the individual.

13 (b) A provider's solicitation of an individual's consent to an
 14 action described in subsection (a) must:

15 (1) describe the action in terms that are sufficiently clear and
 16 concise as to be reasonably understandable by a person of
 17 ordinary intelligence; and

18 (2) solicit the individual's consent to the action separately
 19 from a solicitation of the individual's consent to any other
 20 action described in subsection (a).

21 (c) Consent to an action under subsection (a) is not freely given,
 22 specific, informed, and unambiguous if the consent is provided by
 23 any of the following means:

24 (1) The individual's inaction.

25 (2) The individual's acceptance of:

26 (A) general or broad terms of service; or

27 (B) any other document requiring agreement by an
 28 individual using the provider's services;

29 containing information unrelated to the action under
 30 subsection (a).

31 (3) The individual closing, muting, pausing, or hovering a
 32 computer cursor over a piece of content.

33 (4) The individual's communication of consent through an
 34 Internet user interface that is designed or manipulated with
 35 the substantial effect of subverting or impairing user
 36 autonomy, decision making, or choice.

37 Sec. 9. (a) A consumer genetic testing provider that performs,
 38 or causes to be performed, genetic testing on an individual's
 39 biological material shall do the following:

40 (1) Implement commercially reasonable security measures to
 41 protect:

42 (A) the individual's biological material; and



- 1 **(B) data resulting from genetic testing performed on the**
2 **individual's biological material;**
3 **from unauthorized access, destruction, use, modification, or**
4 **disclosure.**
5 **(2) Allow the individual access to any data resulting from**
6 **genetic testing performed on the individual's biological**
7 **material.**
8 **(3) Provide the following:**
9 **(A) A procedure by which the individual can revoke any**
10 **consent provided by the individual under section 8 of this**
11 **chapter. The procedure must enable the individual to**
12 **communicate the revocation:**
13 **(i) directly to the provider; and**
14 **(ii) through one (1) or more means, at least one (1) of**
15 **which must be the primary means by which the provider**
16 **communicates with the individual.**
17 **(B) Both:**
18 **(i) notice of the existence of; and**
19 **(ii) instructions regarding the use of;**
20 **the procedure under clause (A) that are sufficiently clear**
21 **and concise as to be reasonably understandable by a**
22 **person of ordinary intelligence.**
23 **(4) Comply with a revocation of consent by the individual not**
24 **later than thirty (30) days after the individual communicates**
25 **the revocation to the provider, including by:**
26 **(A) destroying the individual's biological material not later**
27 **than thirty (30) days after the individual revokes the**
28 **individual's consent to the provider's retention of the**
29 **biological material under section 8(a)(4) of this chapter;**
30 **and**
31 **(B) destroying any data resulting from genetic testing**
32 **performed on the individual's biological material not later**
33 **than thirty (30) days after the individual revokes the**
34 **individual's consent to the provider's retention of the data**
35 **under section 8(a)(5) of this chapter.**
36 **(5) Provide a third party with access to only deidentified data**
37 **resulting from genetic testing performed on the individual's**
38 **biological material, regardless of whether the individual has**
39 **consented to the provider providing the third party with**
40 **access to the data under section 8(a)(3) of this chapter.**
41 **(6) Provide a third party with access to the individual's**
42 **biological material, or to data resulting from genetic testing**



1 performed on the individual's biological material, only under
2 contractual terms that prohibit the third party from:

3 (A) using the biological material or data for any use to
4 which the individual has not consented under section 8 of
5 this chapter;

6 (B) providing another party with access to the biological
7 material or data; or

8 (C) retaining the biological material or data longer than
9 the provider is authorized to retain the biological material
10 or data under this chapter.

11 (7) Ensure that:

12 (A) any advertising or marketing communications sent to
13 the individual as a result of the individual's:

14 (i) solicitation and use of the provider's services; or

15 (ii) use of the provider's website or other remote or
16 virtual services;

17 are clearly and prominently denoted as advertising or
18 marketing materials; and

19 (B) advertising or marketing communications described in
20 clause (A) that are sent by a third party clearly and
21 prominently:

22 (i) identify the third party; and

23 (ii) notify the individual that any claims made in the
24 advertising or marketing communications have not been
25 evaluated by the provider.

26 (b) A consumer genetic testing provider may not provide data,
27 other than deidentified data, resulting from genetic testing
28 performed on an individual's biological material to:

29 (1) an insurer;

30 (2) a person that, in the ordinary course of the person's
31 business, provides information or data to insurers for the
32 purposes of underwriting or rating of risks; or

33 (3) a person that employs the individual;

34 regardless of whether the individual has consented to the provider
35 providing third parties with access to the data under section 8(a)(3)
36 of this chapter.

37 (c) A consumer genetic testing provider may not charge a fee for
38 the provision of biological material or for the provision of data
39 resulting from genetic testing performed on biological material:

40 (1) to a law enforcement agency; or

41 (2) as required by a court order;

42 that is more than the actual cost, not including labor costs or



1 overhead costs, to the consumer genetic testing provider of
 2 providing the material or data.

3 **Sec. 10. A consumer genetic testing provider that violates this**
 4 **chapter commits a deceptive act that is actionable by the attorney**
 5 **general and is subject to the remedies and penalties under**
 6 **IC 24-5-0.5.**

7 SECTION 3. IC 24-5-0.5-3, AS AMENDED BY P.L.34-2022,
 8 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2024]: Sec. 3. (a) A supplier may not commit an unfair,
 10 abusive, or deceptive act, omission, or practice in connection with a
 11 consumer transaction. Such an act, omission, or practice by a supplier
 12 is a violation of this chapter whether it occurs before, during, or after
 13 the transaction. An act, omission, or practice prohibited by this section
 14 includes both implicit and explicit misrepresentations.

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

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

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

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

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

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

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

38 (7) That the supplier has a sponsorship, approval, or affiliation in
 39 such consumer transaction the supplier does not have, and which
 40 the supplier knows or should reasonably know that the supplier
 41 does not have.

42 (8) That such consumer transaction involves or does not involve



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



- 1 examination upon the request of the customer.
- 2 (14) Engaging in the replacement or repair of the subject of a
3 consumer transaction if the consumer has not authorized the
4 replacement or repair, and if the supplier knows or should
5 reasonably know that it is not authorized.
- 6 (15) The act of misrepresenting the geographic location of the
7 supplier by listing an alternate business name or an assumed
8 business name (as described in IC 23-0.5-3-4) in a local telephone
9 directory if:
- 10 (A) the name misrepresents the supplier's geographic location;
11 (B) the listing fails to identify the locality and state of the
12 supplier's business;
13 (C) calls to the local telephone number are routinely forwarded
14 or otherwise transferred to a supplier's business location that
15 is outside the calling area covered by the local telephone
16 directory; and
17 (D) the supplier's business location is located in a county that
18 is not contiguous to a county in the calling area covered by the
19 local telephone directory.
- 20 (16) The act of listing an alternate business name or assumed
21 business name (as described in IC 23-0.5-3-4) in a directory
22 assistance data base if:
- 23 (A) the name misrepresents the supplier's geographic location;
24 (B) calls to the local telephone number are routinely forwarded
25 or otherwise transferred to a supplier's business location that
26 is outside the local calling area; and
27 (C) the supplier's business location is located in a county that
28 is not contiguous to a county in the local calling area.
- 29 (17) The violation by a supplier of IC 24-3-4 concerning
30 cigarettes for import or export.
- 31 (18) The act of a supplier in knowingly selling or reselling a
32 product to a consumer if the product has been recalled, whether
33 by the order of a court or a regulatory body, or voluntarily by the
34 manufacturer, distributor, or retailer, unless the product has been
35 repaired or modified to correct the defect that was the subject of
36 the recall.
- 37 (19) The violation by a supplier of 47 U.S.C. 227, including any
38 rules or regulations issued under 47 U.S.C. 227.
- 39 (20) The violation by a supplier of the federal Fair Debt
40 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
41 rules or regulations issued under the federal Fair Debt Collection
42 Practices Act (15 U.S.C. 1692 et seq.).



- 1 (21) A violation of IC 24-5-7 (concerning health spa services), as
2 set forth in IC 24-5-7-17.
- 3 (22) A violation of IC 24-5-8 (concerning business opportunity
4 transactions), as set forth in IC 24-5-8-20.
- 5 (23) A violation of IC 24-5-10 (concerning home consumer
6 transactions), as set forth in IC 24-5-10-18.
- 7 (24) A violation of IC 24-5-11 (concerning real property
8 improvement contracts), as set forth in IC 24-5-11-14.
- 9 (25) A violation of IC 24-5-12 (concerning telephone
10 solicitations), as set forth in IC 24-5-12-23.
- 11 (26) A violation of IC 24-5-13.5 (concerning buyback motor
12 vehicles), as set forth in IC 24-5-13.5-14.
- 13 (27) A violation of IC 24-5-14 (concerning automatic
14 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 15 (28) A violation of IC 24-5-15 (concerning credit services
16 organizations), as set forth in IC 24-5-15-11.
- 17 (29) A violation of IC 24-5-16 (concerning unlawful motor
18 vehicle subleasing), as set forth in IC 24-5-16-18.
- 19 (30) A violation of IC 24-5-17 (concerning environmental
20 marketing claims), as set forth in IC 24-5-17-14.
- 21 (31) A violation of IC 24-5-19 (concerning deceptive commercial
22 solicitation), as set forth in IC 24-5-19-11.
- 23 (32) A violation of IC 24-5-21 (concerning prescription drug
24 discount cards), as set forth in IC 24-5-21-7.
- 25 (33) A violation of IC 24-5-23.5-7 (concerning real estate
26 appraisals), as set forth in IC 24-5-23.5-9.
- 27 (34) A violation of IC 24-5-26 (concerning identity theft), as set
28 forth in IC 24-5-26-3.
- 29 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
30 as set forth in IC 24-5.5-6-1.
- 31 (36) A violation of IC 24-8 (concerning promotional gifts and
32 contests), as set forth in IC 24-8-6-3.
- 33 (37) A violation of IC 21-18.5-6 (concerning representations
34 made by a postsecondary credit bearing proprietary educational
35 institution), as set forth in IC 21-18.5-6-22.5.
- 36 (38) A violation of IC 24-5-15.5 (concerning collection actions of
37 a plaintiff debt buyer), as set forth in IC 24-5-15.5-6.
- 38 (39) A violation of IC 24-14 (concerning towing services), as set
39 forth in IC 24-14-10-1.
- 40 (40) A violation of IC 24-5-14.5 (concerning misleading or
41 inaccurate caller identification information), as set forth in
42 IC 24-5-14.5-12.



1 (41) A violation of IC 24-5-27 (concerning intrastate inmate
2 calling services), as set forth in IC 24-5-27-27.

3 **(42) A violation of IC 24-4-24 (concerning consumer genetic**
4 **testing providers), as set forth in IC 24-4-24-10.**

5 (c) Any representations on or within a product or its packaging or
6 in advertising or promotional materials which would constitute a
7 deceptive act shall be the deceptive act both of the supplier who places
8 such representation thereon or therein, or who authored such materials,
9 and such other suppliers who shall state orally or in writing that such
10 representation is true if such other supplier shall know or have reason
11 to know that such representation was false.

12 (d) If a supplier shows by a preponderance of the evidence that an
13 act resulted from a bona fide error notwithstanding the maintenance of
14 procedures reasonably adopted to avoid the error, such act shall not be
15 deceptive within the meaning of this chapter.

16 (e) It shall be a defense to any action brought under this chapter that
17 the representation constituting an alleged deceptive act was one made
18 in good faith by the supplier without knowledge of its falsity and in
19 reliance upon the oral or written representations of the manufacturer,
20 the person from whom the supplier acquired the product, any testing
21 organization, or any other person provided that the source thereof is
22 disclosed to the consumer.

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

28 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
29 company or other provider of a telephone directory or directory
30 assistance service or its officer or agent is immune from liability for
31 publishing the listing of an alternate business name or assumed
32 business name of a supplier in its directory or directory assistance data
33 base unless the telephone company or other provider of a telephone
34 directory or directory assistance service is the same person as the
35 supplier who has committed the deceptive act.

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

40 SECTION 4. IC 24-5-0.5-4, AS AMENDED BY P.L.11-2023,
41 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2024]: Sec. 4. (a) A person relying upon an uncured or



1 incurable deceptive act may bring an action for the damages actually
 2 suffered as a consumer as a result of the deceptive act or five hundred
 3 dollars (\$500), whichever is greater. The court may increase damages
 4 for a willful deceptive act in an amount that does not exceed the greater
 5 of:

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

9 Except as provided in subsection (k), the court may award reasonable
 10 attorney's fees to the party that prevails in an action under this
 11 subsection. This subsection does not apply to a consumer transaction
 12 in real property, including a claim or action involving a construction
 13 defect (as defined in IC 32-27-3-1(5)) brought against a construction
 14 professional (as defined in IC 32-27-3-1(4)), except for purchases of
 15 time shares and camping club memberships. This subsection does not
 16 apply with respect to a deceptive act described in section 3(b)(20) of
 17 this chapter. This subsection also does not apply to a violation of
 18 **IC 24-4-24**, IC 24-4.7, IC 24-5-12, IC 24-5-14, or IC 24-5-14.5. Actual
 19 damages awarded to a person under this section have priority over any
 20 civil penalty imposed under this chapter.

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



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

7 (1) issue an injunction;

8 (2) order the supplier to make payment of the money unlawfully
9 received from the aggrieved consumers to be held in escrow for
10 distribution to aggrieved consumers;

11 (3) for a knowing violation against a senior consumer, increase
12 the amount of restitution ordered under subdivision (2) in any
13 amount up to three (3) times the amount of damages incurred or
14 value of property or assets lost;

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

18 (5) provide for the appointment of a receiver; and

19 (6) order the department of state revenue to suspend the supplier's
20 registered retail merchant certificate, subject to the requirements
21 and prohibitions contained in IC 6-2.5-8-7(i), if the court finds
22 that a violation of this chapter involved the sale or solicited sale
23 of a synthetic drug (as defined in IC 35-31.5-2-321), a synthetic
24 drug lookalike substance (as defined in IC 35-31.5-2-321.5
25 (repealed)) (before July 1, 2019), a controlled substance analog
26 (as defined in IC 35-48-1-9.3), or a substance represented to be a
27 controlled substance (as described in IC 35-48-4-4.6).

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

31 (e) In any action under subsection (a) or (b), upon the filing of the
32 complaint or on the appearance of any defendant, claimant, or any
33 other party, or at any later time, the trial court, the supreme court, or the
34 court of appeals may require the plaintiff, defendant, claimant, or any
35 other party or parties to give security, or additional security, in such
36 sum as the court shall direct to pay all costs, expenses, and
37 disbursements that shall be awarded against that party or which that
38 party may be directed to pay by any interlocutory order by the final
39 judgment or on appeal.

40 (f) Any person who violates the terms of an injunction issued under
41 subsection (c) shall forfeit and pay to the state a civil penalty of not
42 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(b)(19), 3(b)(20), ~~or 3(b)(40)~~, **or**
 9 **3(b)(42)** of this chapter, the attorney general, in an action pursuant to
 10 subsection (c), may recover from the person on behalf of the state a
 11 civil penalty of a fine not exceeding five thousand dollars (\$5,000) per
 12 violation.

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

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

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

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

24 (i) A senior consumer relying upon an uncured or incurable
 25 deceptive act, including an act related to hypnotism, may bring an
 26 action to recover treble damages, if appropriate.

27 (j) An offer to cure is:

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

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

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

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



1 the value of the offer to cure.

2 (l) If a court finds that a person has knowingly violated section
 3 3(b)(20) of this chapter, the attorney general, in an action under
 4 subsection (c), may recover from the person on behalf of the state a
 5 civil penalty not exceeding one thousand dollars (\$1,000) per
 6 consumer. In determining the amount of the civil penalty in any action
 7 by the attorney general under this subsection, the court shall consider,
 8 among other relevant factors, the frequency and persistence of
 9 noncompliance by the debt collector, the nature of the noncompliance,
 10 and the extent to which the noncompliance was intentional. A person
 11 may not be held liable in any action by the attorney general for a
 12 violation of section 3(b)(20) of this chapter if the person shows by a
 13 preponderance of evidence that the violation was not intentional and
 14 resulted from a bona fide error, notwithstanding the maintenance of
 15 procedures reasonably adapted to avoid the error. A person may not be
 16 held liable in any action for a violation of this chapter for contacting a
 17 person other than the debtor, if the contact is made in compliance with
 18 the Fair Debt Collection Practices Act.

19 (m) If a court finds that a person has knowingly or intentionally
 20 violated section 3(b)(40) of this chapter, the attorney general, in an
 21 action under subsection (c), may recover from the person on behalf of
 22 the state a civil penalty in accordance with IC 24-5-14.5-12(b). As
 23 specified in IC 24-5-14.5-12(b), a civil penalty recovered under
 24 IC 24-5-14.5-12(b) shall be deposited in the consumer protection
 25 division telephone solicitation fund established by IC 24-4.7-3-6 to be
 26 used for the administration and enforcement of IC 24-5-14.5. In
 27 addition to the recovery of a civil penalty in accordance with
 28 IC 24-5-14.5-12(b), the attorney general may also recover reasonable
 29 attorney fees and court costs from the person on behalf of the state.
 30 Those funds shall also be deposited in the consumer protection division
 31 telephone solicitation fund established by IC 24-4.7-3-6.

32 **(n) If a court finds that a person has violated section 3(b)(42) of**
 33 **this chapter, the attorney general, in an action under subsection**
 34 **(c), may recover from the person on behalf of the state a civil**
 35 **penalty for each violation in the amount of:**

36 **(1) not more than one thousand dollars (\$1,000) if the court**
 37 **finds that the violation was neither knowing nor intentional;**
 38 **and**

39 **(2) not less than one thousand dollars (\$1,000) and not more**
 40 **than ten thousand dollars (\$10,000) if the court finds that the**
 41 **violation was knowing or intentional.**

