

HOUSE BILL No. 1413

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4-23; IC 24-5-0.5-3.

Synopsis: Right to repair. Requires a manufacturer of a consumer electronic device that is sold in Indiana to: (1) provide to an independent service provider or owner of the electronic device any service documentation the manufacturer provides to its authorized service providers; and (2) make available for purchase, upon reasonable terms, any service part the manufacturer provides to its authorized service providers (the requirements). Provides that the requirements do not apply to manufacturers of: (1) motor vehicles; or (2) medical devices. Provides for the following exceptions to the requirements: (1) Provides that a manufacturer is not required to provide: (A) information unrelated to diagnostic, maintenance, or repair service; or (B) service documentation or service parts to which the manufacturer does not have access. (2) Provides that a manufacturer is not required to provide to an independent service provider or owner service information that the manufacturer has provided to an aftermarket vendor that: (A) sells or publishes service information for consumer electronic devices; or (B) makes and sells tools or software for diagnosing, maintaining, or repairing the manufacturer's consumer electronic device. (3) Provides that a
(Continued next page)

Effective: July 1, 2019.

Goodin

January 14, 2019, read first time and referred to Committee on Commerce, Small Business and Economic Development.



Digest Continued

manufacturer is not required to divulge a trade secret. Provides that a manufacturer that sells service documentation to an independent service provider or owner: (1) in a format that is standardized with respect to comparable information supplied by manufacturers of comparable consumer electronic devices; and (2) under terms and conditions more favorable than the terms and conditions under which the manufacturer provides the information to an authorized service provider; may not require an authorized service provider to purchase the service documentation in a proprietary format unless the proprietary format includes content or functionality that is not available in the standardized format. Provides that a violation of the requirements is: (1) actionable by the attorney general as; and (2) subject to the remedies and penalties that apply to; a deceptive consumer sales practice.



Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1413

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 24-4-23 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2019]:
4 **Chapter 23. Consumer Access to Product Repair Resources**
5 **Sec. 1. As used in this chapter, "aftermarket vendor" means a**
6 **person that:**
7 **(1) in the ordinary course of business:**
8 **(A) publishes or sells diagnostic, maintenance, or repair**
9 **information regarding; or**
10 **(B) creates, for distribution and sale in the United States,**
11 **mechanisms, software, or other tools for use in performing**
12 **diagnostic, maintenance, or repair service for;**
13 **a consumer electronic device;**
14 **(2) is not the manufacturer of the consumer electronic device;**
15 **and**

2019

IN 1413—LS 7332/DI 119



- 1 (3) does not engage in the activities described in subdivision
 2 (1) under an agreement with the manufacturer of the
 3 consumer electronic device.
 4 Sec. 2. As used in this chapter, "authorized service provider"
 5 means:
 6 (1) a manufacturer that provides; or
 7 (2) a person that:
 8 (A) is not an affiliate of a manufacturer; and
 9 (B) has entered into an agreement with the manufacturer
 10 to provide:
 11 (i) on behalf of; or
 12 (ii) under the name of;
 13 the manufacturer;
 14 diagnostic, maintenance, or repair service for a consumer
 15 electronic device made by the manufacturer.
 16 Sec. 3. (a) As used in this chapter, "consumer electronic device"
 17 means a product or component of a product that:
 18 (1) contains a microprocessor; and
 19 (2) is manufactured for distribution and sale in the United
 20 States.
 21 (b) The term does not include:
 22 (1) a motor vehicle or component of a motor vehicle; or
 23 (2) a medical device or component of a medical device.
 24 Sec. 4. As used in this chapter, "embedded firmware" means
 25 software delivered with, or as a component of, a consumer
 26 electronic device for purposes of effecting or facilitating the
 27 operation of the consumer electronic device, including software
 28 designated as:
 29 (1) an operating system;
 30 (2) machine code;
 31 (3) assembly code;
 32 (4) root code; or
 33 (5) microcode.
 34 Sec. 5. (a) As used in this chapter, "independent service
 35 provider" means a person that:
 36 (1) in the ordinary course of business, performs diagnostic,
 37 maintenance, or repair service for a consumer electronic
 38 device; and
 39 (2) is not:
 40 (A) an authorized service provider; or
 41 (B) an affiliate of an authorized service provider;
 42 for the consumer electronic device.



1 **(b) The term includes a manufacturer when the manufacturer**
 2 **is performing diagnostic, maintenance, or repair service for a**
 3 **consumer electronic device that is not made by the manufacturer**
 4 **or by an affiliate of the manufacturer.**

5 **Sec. 6. As used in this chapter, "manufacturer" means a person**
 6 **that, in the ordinary course of business:**

7 **(1) sells or leases:**

8 **(A) a consumer electronic device; or**

9 **(B) a component of a consumer electronic device;**

10 **made by, or on behalf of, the person; and**

11 **(2) performs, or provides for the performance of, diagnostic,**
 12 **maintenance, or repair service for the consumer electronic**
 13 **device or component of a consumer electronic device.**

14 **Sec. 7. As used in this chapter, "medical device" has the same**
 15 **meaning as "device" as set forth in 21 U.S.C. 321(h).**

16 **Sec. 8. (a) As used in this chapter, "motor vehicle" means a**
 17 **vehicle that is:**

18 **(1) designed for transporting people or property on a street or**
 19 **highway; and**

20 **(2) certified by the vehicle's maker under all applicable**
 21 **federal safety and emissions standards and requirements for**
 22 **distribution and sale in the United States.**

23 **(b) The term does not include a mobile home (as defined in**
 24 **IC 9-13-2-103.2), motorcycle (as defined in IC 9-13-2-108), or**
 25 **recreational vehicle (as defined in IC 9-13-2-150).**

26 **Sec. 9. As used in this chapter, "owner" means a person that:**

27 **(1) is domiciled in Indiana; and**

28 **(2) lawfully owns or has legal right to possession of a**
 29 **consumer electronic device.**

30 **Sec. 10. As used in this chapter, "person" means an individual,**
 31 **an organization, or any other legal entity.**

32 **Sec. 11. As used in this chapter, "remote diagnostic service"**
 33 **means a transfer of data that is made:**

34 **(1) between a consumer electronic device and a provider of**
 35 **diagnostic, maintenance, or repair service for the consumer**
 36 **electronic device; and**

37 **(2) for the purpose of:**

38 **(A) performing diagnostic, maintenance, or repair service**
 39 **for;**

40 **(B) changing a setting on; or**

41 **(C) determining the location of;**

42 **the consumer electronic device.**



1 **Sec. 12. As used in this chapter, "service documentation" means**
 2 **information, including:**

- 3 **(1) manuals;**
 4 **(2) schematics;**
 5 **(3) diagrams;**
 6 **(4) report output;**
 7 **(5) service code descriptions;**
 8 **(6) technical updates;**
 9 **(7) service access passwords; and**
 10 **(8) information necessary to reset or unlock a security related**
 11 **function;**

12 **that is provided by the manufacturer of a consumer electronic**
 13 **device to an authorized service provider for the purpose of the**
 14 **authorized service provider's performance of diagnostic,**
 15 **maintenance, or repair service for the consumer electronic device.**

16 **Sec. 13. As used in this chapter, "service part" means:**

- 17 **(1) a new or used component of a consumer electronic device;**
 18 **(2) a diagnostic or repair tool or software; or**
 19 **(3) an update, patch, or fix for a consumer electronic device's**
 20 **embedded firmware;**

21 **that is provided by the manufacturer of the consumer electronic**
 22 **device to an authorized service provider for the purpose of the**
 23 **authorized service provider's performance of diagnostic,**
 24 **maintenance, or repair service for the consumer electronic device.**

25 **Sec. 14. As used in this chapter, "software" means a set of**
 26 **coded, programmable instructions designed to cause a consumer**
 27 **electronic device or component of a consumer electronic device to**
 28 **perform a task.**

29 **Sec. 15. As used in this chapter, "trade secret" has the meaning**
 30 **set forth in IC 24-2-3-2.**

31 **Sec. 16. (a) Except as provided in section 17 of this chapter, a**
 32 **manufacturer that sells or leases a consumer electronic device in**
 33 **Indiana shall do the following:**

- 34 **(1) Subject to subsection (b), provide the consumer electronic**
 35 **device's service documentation to an independent service**
 36 **provider for, or to an owner of, the consumer electronic**
 37 **device:**
 38 **(A) within the amount of time within which;**
 39 **(B) in the format in which; and**
 40 **(C) at no cost or at a price that is not more than the price**
 41 **at which;**

42 **the manufacturer provides the service documentation to an**



1 authorized service provider for the consumer electronic
2 device.

3 **(2) Make available for purchase by an independent service**
4 **provider for, or by an owner of, the consumer electronic**
5 **device, upon terms that are reasonable in relation to:**

6 **(A) the net price at which the manufacturer provides the**
7 **service part to an authorized service provider, after**
8 **deducting any discounts, rebates, or other incentives**
9 **offered by the manufacturer;**

10 **(B) the cost to the manufacturer of making, preparing, and**
11 **delivering the service part:**

12 **(i) including amortized capital costs; and**

13 **(ii) excluding research and development costs;**

14 **incurred by the manufacturer in making, preparing, and**
15 **delivering the service part; and**

16 **(C) the price charged by manufacturers of comparable**
17 **consumer electronic devices for a comparable service part;**
18 **any service part for the consumer electronic device that the**
19 **manufacturer makes available to an authorized service**
20 **provider for the consumer electronic device.**

21 **(b) A manufacturer that supplies information necessary to reset**
22 **or unlock a security related function under subsection (a)(1) may**
23 **supply the information through a secure data transfer system.**

24 **(c) A diagnostic or repair tool or software provided by a**
25 **manufacturer to an independent service provider or owner under**
26 **subsection (a)(2) must incorporate the same diagnostic,**
27 **maintenance, repair, and remote diagnostic service capabilities**
28 **that the manufacturer makes available to the manufacturer's own**
29 **repair or engineering staff or to an authorized service provider for**
30 **the consumer electronic device.**

31 **Sec. 17. (a) A manufacturer is not required under this chapter**
32 **to:**

33 **(1) provide, or require an authorized service provider to**
34 **provide, to an independent service provider for, or to an**
35 **owner of, a consumer electronic device:**

36 **(A) either:**

37 **(i) service documentation; or**

38 **(ii) a service part;**

39 **that is not available to the manufacturer or the authorized**
40 **service provider; or**

41 **(B) information that is unrelated to performance of**
42 **diagnostic, maintenance, or repair service for the**



- 1 consumer electronic device; or
 2 (2) divulge a trade secret.
- 3 (b) A manufacturer that provides service documentation
 4 regarding a consumer electronic device to one (1) or more
 5 aftermarket vendors:
- 6 (1) is not required to provide the service documentation to an
 7 independent service provider for, or to an owner of, the
 8 consumer electronic device under this chapter; and
 9 (2) is not responsible for the content or functionality of the
 10 service documentation as:
- 11 (A) published or sold by; or
 12 (B) used or implemented in the mechanisms, software, or
 13 other tools created by;
 14 the aftermarket vendor.
- 15 Sec. 18. A manufacturer that sells service documentation to an
 16 independent service provider for, or to an owner of, a consumer
 17 electronic device:
- 18 (1) in a format that is standardized with respect to
 19 comparable information supplied by manufacturers of
 20 comparable consumer electronic devices; and
 21 (2) in a manner, or under terms and conditions, more
 22 favorable than the manner in which, or the terms and
 23 conditions under which, the manufacturer provides the
 24 information to an authorized service provider;
- 25 may not require an authorized service provider to purchase the
 26 service documentation in a proprietary format unless the
 27 proprietary format includes content or functionality that is not
 28 available in the format described in subdivision (1).
- 29 Sec. 19. (a) Except as provided in subsection (b), this chapter
 30 may not be construed as to affect the terms of an agreement
 31 between a manufacturer and an authorized service provider,
 32 including terms regarding the authorized service provider's
 33 performance of warranty or recall service on behalf of the
 34 manufacturer.
- 35 (b) Notwithstanding subsection (a), a provision of an agreement
 36 between a manufacturer and an authorized service provider that
 37 purports to waive, avoid, restrict, or limit the manufacturer's
 38 obligations under this chapter is void and unenforceable.
- 39 Sec. 20. A manufacturer that knowingly and intentionally
 40 violates this chapter commits a deceptive act that is:
- 41 (1) actionable by the attorney general; and
 42 (2) subject to the remedies and penalties;



1 **under IC 24-5-0.5.**

2 SECTION 2. IC 24-5-0.5-3, AS AMENDED BY P.L.170-2017,
3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2019]: Sec. 3. (a) A supplier may not commit an unfair,
5 abusive, or deceptive act, omission, or practice in connection with a
6 consumer transaction. Such an act, omission, or practice by a supplier
7 is a violation of this chapter whether it occurs before, during, or after
8 the transaction. An act, omission, or practice prohibited by this section
9 includes both implicit and explicit misrepresentations.

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

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

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

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

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

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

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

33 (7) That the supplier has a sponsorship, approval, or affiliation in
34 such consumer transaction the supplier does not have, and which
35 the supplier knows or should reasonably know that the supplier
36 does not have.

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

41 (9) That the consumer will receive a rebate, discount, or other
42 benefit as an inducement for entering into a sale or lease in return



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



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



- 1 transactions), as set forth in IC 24-5-10-18.
- 2 (24) A violation of IC 24-5-11 (concerning real property
- 3 improvement contracts), as set forth in IC 24-5-11-14.
- 4 (25) A violation of IC 24-5-12 (concerning telephone
- 5 solicitations), as set forth in IC 24-5-12-23.
- 6 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 7 vehicles), as set forth in IC 24-5-13.5-14.
- 8 (27) A violation of IC 24-5-14 (concerning automatic
- 9 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 10 (28) A violation of IC 24-5-15 (concerning credit services
- 11 organizations), as set forth in IC 24-5-15-11.
- 12 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 13 vehicle subleasing), as set forth in IC 24-5-16-18.
- 14 (30) A violation of IC 24-5-17 (concerning environmental
- 15 marketing claims), as set forth in IC 24-5-17-14.
- 16 (31) A violation of IC 24-5-19 (concerning deceptive commercial
- 17 solicitation), as set forth in IC 24-5-19-11.
- 18 (32) A violation of IC 24-5-21 (concerning prescription drug
- 19 discount cards), as set forth in IC 24-5-21-7.
- 20 (33) A violation of IC 24-5-23.5-7 (concerning real estate
- 21 appraisals), as set forth in IC 24-5-23.5-9.
- 22 (34) A violation of IC 24-5-26 (concerning identity theft), as set
- 23 forth in IC 24-5-26-3.
- 24 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
- 25 as set forth in IC 24-5.5-6-1.
- 26 (36) A violation of IC 24-8 (concerning promotional gifts and
- 27 contests), as set forth in IC 24-8-6-3.
- 28 (37) A violation of IC 21-18.5-6 (concerning representations
- 29 made by a postsecondary credit bearing proprietary educational
- 30 institution), as set forth in IC 21-18.5-6-22.5.
- 31 **(38) A violation of IC 24-4-23 (concerning consumer access to**
- 32 **product repair resources), as set forth in IC 24-4-23-20.**
- 33 (c) Any representations on or within a product or its packaging or
- 34 in advertising or promotional materials which would constitute a
- 35 deceptive act shall be the deceptive act both of the supplier who places
- 36 such representation thereon or therein, or who authored such materials,
- 37 and such other suppliers who shall state orally or in writing that such
- 38 representation is true if such other supplier shall know or have reason
- 39 to know that such representation was false.
- 40 (d) If a supplier shows by a preponderance of the evidence that an
- 41 act resulted from a bona fide error notwithstanding the maintenance of
- 42 procedures reasonably adopted to avoid the error, such act shall not be



1 deceptive within the meaning of this chapter.

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

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

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

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

