

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Senate Bill 390 be amended to read as follows:

- 1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert: SECTION 1. IC 24-5-0.5-3 IS AMENDED  
3 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.  
4 (a) The following acts or representations as to the subject matter  
5 of a consumer transaction, made orally, in writing, or by  
6 electronic communication, by a supplier, are deceptive acts:  
7           (1) That such subject of a consumer transaction has  
8 sponsorship, approval, performance, characteristics,  
9 accessories, uses, or benefits it does not have which the  
10 supplier knows or should reasonably know it does not have.  
11           (2) That such subject of a consumer transaction is of a  
12 particular standard, quality, grade, style, or model, if it is  
13 not and if the supplier knows or should reasonably know  
14 that it is not.  
15           (3) That such subject of a consumer transaction is new or  
16 unused, if it is not and if the supplier knows or should  
17 reasonably know that it is not.  
18           (4) That such subject of a consumer transaction will be  
19 supplied to the public in greater quantity than the supplier  
20 intends or reasonably expects.  
21           (5) That replacement or repair constituting the subject of a  
22 consumer transaction is needed, if it is not and if the  
23 supplier knows or should reasonably know that it is not.  
24           (6) That a specific price advantage exists as to such subject  
25 of a consumer transaction, if it does not and if the supplier  
26 knows or should reasonably know that it does not.  
27           (7) That the supplier has a sponsorship, approval, or  
28 affiliation in such consumer transaction the supplier does

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

- 1 disposes of the part repaired or replaced earlier than  
 2 seventy-two (72) hours after both:
- 3 (A) the customer has been notified that the work has been  
 4 completed; and
  - 5 (B) the part repaired or replaced has been made available  
 6 for examination upon the request of the customer.
- 7 (14) Engaging in the replacement or repair of the subject of  
 8 a consumer transaction if the consumer has not authorized  
 9 the replacement or repair, and if the supplier knows or  
 10 should reasonably know that it is not authorized.
- 11 (15) The act of misrepresenting the geographic location of  
 12 the supplier by listing a fictitious business name or an  
 13 assumed business name (as described in IC 23-15-1) in a  
 14 local telephone directory if:
- 15 (A) the name misrepresents the supplier's geographic location;
  - 16 (B) the listing fails to identify the locality and state of the  
 17 supplier's business;
  - 18 (C) calls to the local telephone number are routinely  
 19 forwarded or otherwise transferred to a supplier's business  
 20 location that is outside the calling area covered by the  
 21 local telephone directory; and
  - 22 (D) the supplier's business location is located in a county  
 23 that is not contiguous to a county in the calling area  
 24 covered by the local telephone directory.
- 25 (16) The act of listing a fictitious business name or  
 26 assumed business name (as described in IC 23-15-1) in a  
 27 directory assistance database if:
- 28 (A) the name misrepresents the supplier's geographic location;
  - 29 (B) calls to the local telephone number are routinely  
 30 forwarded or otherwise transferred to a supplier's business  
 31 location that is outside the local calling area; and
  - 32 (C) the supplier's business location is located in a county  
 33 that is not contiguous to a county in the local calling area.
- 34 (17) That the supplier violated IC 24-3-4 concerning  
 35 cigarettes for import or export.
- 36 (18) That a supplier knowingly sells or resells a product to  
 37 a consumer if the product has been recalled, whether by the  
 38 order of a court or a regulatory body, or voluntarily by the  
 39 manufacturer, distributor, or retailer unless the product has  
 40 been repaired or modified to correct the defect that was the  
 41 subject of the recall.
- 42 (19) That the supplier violated 47 U.S.C. 227, including  
 43 any rules or regulations issued under 47 U.S.C. 227.
- 44 **(20) That a person knowingly or intentionally commits**

1           **mortgage fraud (as described in IC 24-5.5).**

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

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

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

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

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

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

41          Page 5, line 17, delete ".", insert "; and"

42          Page 5, after line 17, begin a new paragraph indent and  
43          insert: "**(3) foreclosure purchaser complies with the security**  
44          **requirements contained in IC 24-5-15-8."**

1 Page 6, line 38, delete "a Class A misdemeanor.", insert "**a**  
2 **deceptive act under IC 24-5-0.5.**"

3 Page 6, delete lines 39 through 41, insert "**The community**  
4 **housing development authority shall certify and transmit to**  
5 **the attorney general no less than four (4) times per year, a**  
6 **list of those nonprofit organizations that:**"

7 Renumber all SECTIONS consecutively.

(Reference is to SB 390 as printed February 20, 2007.)

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Senator BRODEN