



March 26, 2013

ENGROSSED
SENATE BILL No. 382

DIGEST OF SB 382 (Updated March 25, 2013 11:56 am - DI 69)

Citations Affected: IC 24-4.6; IC 24-5; noncode.

Synopsis: Senior consumer protection act. Creates the senior consumer protection act and makes conforming changes. Refers actions regulated by the: (1) department of insurance to the insurance commissioner; and (2) Indiana uniform securities act to the secretary of state. Urges the legislative council to study the topic of a supplier discriminating against consumers based on the price of promotion of goods to retailers by refusing to sell to a retailer a good at the same price that the supplier sells the good to any other retailer.

Effective: Upon passage; July 1, 2013.

**Lanane, Zakas, Banks, Landske,
Hershman, Miller Patricia, Randolph**
(HOUSE SPONSORS — STEUERWALD, KOCH, RIECKEN)

January 10, 2013, read first time and referred to Committee on Civil Law.
February 12, 2013, reported favorably — Do Pass.
February 18, 2013, read second time, amended, ordered engrossed.
February 19, 2013, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Judiciary.
March 26, 2013, amended, reported — Do Pass.

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ES 382—LS 7065/DI 14+



March 26, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 382

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

1 SECTION 1. IC 24-4.6-6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]:

4 **Chapter 6. Senior Consumer Protection**

5 **Sec. 1. (a) This chapter shall be known and may be cited as the**
6 **senior consumer protection act.**

7 **(b) This chapter does not apply to deception, intimidation, or**
8 **other exploitation of a senior consumer in relation to insurance**
9 **coverage or an insurance product that is regulated by the Indiana**
10 **department of insurance. A senior consumer who is a victim of an**
11 **act that is:**

12 **(1) described in section 4(a) or 4(b) of this chapter; and**

13 **(2) related to insurance coverage or an insurance product;**
14 **may report the act to the Indiana department of insurance for**
15 **action by the insurance commissioner under IC 27. If the insurance**
16 **commissioner determines that the person who committed the act**
17 **is not subject to regulation by the Indiana department of**

ES 382—LS 7065/DI 14+



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1 insurance, the insurance commissioner shall immediately refer the
2 senior consumer to the attorney general and the senior consumer
3 may pursue remedies available under this chapter.

4 (c) This chapter does not apply to the exploitation of a senior
5 consumer in relation to securities fraud that is regulated by the
6 secretary of state's office. A senior consumer who is a victim of an
7 act that is:

- 8 (1) described in section 4(a) or 4(b) of this chapter; and
- 9 (2) related to the Indiana uniform securities act under
10 IC 23-19;

11 shall report the act to the secretary of state under IC 23-19. If the
12 secretary of state's office determines the person who committed the
13 act is not subject to the regulation of the secretary of state's office,
14 the secretary of state's office shall immediately refer the senior
15 consumer to the attorney general and the senior consumer may
16 pursue remedies available under this chapter.

17 Sec. 2. (a) This chapter shall be liberally construed and applied
18 to protect senior consumers.

19 (b) The purposes and policies of this chapter are to:

- 20 (1) simplify, clarify, and modernize the law concerning the
- 21 ownership, control, and use of property or assets of senior
- 22 consumers; and
- 23 (2) protect senior consumers from financial exploitation from
- 24 persons, who by deception or intimidation, obtain control
- 25 over the property or assets of a senior consumer.

26 Sec. 3. The following definitions apply throughout this chapter:

- 27 (1) "Deception" means:
 - 28 (A) misrepresentation or omission of any material fact
 - 29 relating to the terms of a contract or agreement entered
 - 30 into with a senior consumer or to the existing or
 - 31 pre-existing condition of any of the property involved in
 - 32 such a contract or agreement; or
 - 33 (B) the use or employment of any misrepresentation, false
 - 34 pretense, or false promise in order to induce, encourage, or
 - 35 solicit a senior consumer to enter into a contract or
 - 36 agreement.
- 37 (2) "Intimidation" means the conduct or communication by
- 38 a person directed toward a senior consumer informing or
- 39 implying to the senior consumer that the senior consumer will
- 40 be deprived of food and nutrition, shelter, prescribed
- 41 medication, or medical care and treatment if the senior
- 42 consumer does not comply with the person's demands.

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1 (3) "Person" means an individual, a corporation, the state of
2 Indiana or its subdivisions or agencies, a business trust, a
3 estate, a trust, a partnership, an association, a nonprofit
4 corporation or organization, a cooperative, or any other legal
5 entity.

6 (4) "Person in a position of trust and confidence" means a
7 person, in relation to a senior consumer, who:

8 (A) is a parent, spouse, adult child, or other relative by
9 blood or marriage of the senior consumer;

10 (B) is a joint tenant or tenant in common with the senior
11 consumer;

12 (C) has a legal or fiduciary relationship with the senior
13 consumer;

14 (D) is a financial planning or investment professional; or

15 (E) is a paid or unpaid caregiver for the senior consumer.

16 (5) "Senior consumer" means an individual who is at least
17 sixty (60) years of age.

18 Sec. 4. (a) A person commits financial exploitation of a senior
19 consumer when the person knowingly and by deception or
20 intimidation obtains control over the property of a senior
21 consumer or illegally uses the assets or resources of a senior
22 consumer.

23 (b) The illegal use of the assets or resources of a senior
24 consumer includes, but is not limited to, the misappropriation of
25 those assets or resources by undue influence, breach of a fiduciary
26 relationship, fraud, deception, extortion, intimidation, or use of the
27 assets or resources contrary to law.

28 (c) Nothing in this section shall be construed to impose civil
29 liability on a person who has made a good faith effort to assist a
30 senior consumer in the management of the senior consumer's
31 property, but through no fault of the person has been unable to
32 provide such assistance.

33 (d) It is not a defense in an action under this chapter that a
34 person reasonably believed that the victim was not a senior
35 consumer.

36 Sec. 5. (a) A senior consumer who is a victim of an act described
37 in section 4(a) or 4(b) of this chapter may bring an action against
38 the person who commits the act.

39 (b) In an action brought against a person under this section, the
40 court may order the person to:

41 (1) return property or assets improperly obtained, controlled,
42 or used; and

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- 1 (2) reimburse the senior consumer for any damages incurred
- 2 or for the value of the property or assets lost as a result of the
- 3 violation or violations of this chapter.
- 4 (c) In addition to the remedy provided in subsection (b), a court
- 5 may order the following:
- 6 (1) For knowing violations committed by a person who is not
- 7 in a position of trust and confidence:
- 8 (A) payment of two (2) times the amount of damages
- 9 incurred or value of property or assets lost; and
- 10 (B) payment of a civil penalty not exceeding five thousand
- 11 dollars (\$5,000).
- 12 (2) For knowing violations committed by a person in a
- 13 position of trust and confidence:
- 14 (A) payment of treble damages; and
- 15 (B) payment of a civil penalty not exceeding ten thousand
- 16 dollars (\$10,000).
- 17 (d) The court may award reasonable attorney's fees to a senior
- 18 consumer that prevails in an action under this section. Actual
- 19 damages awarded to a person under this section have priority over
- 20 any civil penalty imposed under this chapter.
- 21 (e) The burden of proof in proving that a person committed
- 22 financial exploitation of a senior consumer under section 4 of this
- 23 chapter is by a preponderance of the evidence.
- 24 (f) The attorney general may bring an action to enjoin an
- 25 alleged commission of financial exploitation of a senior consumer
- 26 and may petition the court to freeze the assets of the person
- 27 allegedly committing financial exploitation of a senior consumer in
- 28 an amount equal to but not greater than the alleged value of lost
- 29 property or assets for purposes of restoring to the victim the value
- 30 of the lost property or assets. The burden of proof required to
- 31 freeze the assets of a person allegedly committing financial
- 32 exploitation of a senior consumer is by a preponderance of the
- 33 evidence. In addition, the court may:
- 34 (1) issue an injunction;
- 35 (2) order the person to make payment of the money
- 36 unlawfully received from the senior consumer or senior
- 37 consumers, to be held in escrow for distribution to the
- 38 aggrieved senior consumer or senior consumers;
- 39 (3) for knowing violations, increase the amount of restitution
- 40 ordered under subdivision (2) in any amount up to three (3)
- 41 times the amount of damages incurred or value of property or
- 42 assets lost;

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- 1 (4) order the person to pay to the state the reasonable costs of
- 2 the attorney general's investigation and prosecution related
- 3 to the action;
- 4 (5) provide for the appointment of a receiver;
- 5 (6) for knowing violations by a person who is not in a position
- 6 of trust and confidence, order the person to pay a civil penalty
- 7 of up to five thousand dollars (\$5,000) per violation; and
- 8 (7) for knowing violations by a person in a position of trust
- 9 and confidence, order the person to pay a civil penalty of up
- 10 to ten thousand dollars (\$10,000) per violation.

11 (g) In an action under subsection (a) or (f), the court may void

12 or limit the application of contracts or clauses resulting from the

13 financial exploitation.

14 (h) In an action under subsection (a), upon the filing of the

15 complaint or on the appearance of any defendant, claimant, or

16 other party, or at any later time, the trial court, the supreme court,

17 or the court of appeals may require the plaintiff, defendant,

18 claimant, or other party or parties to give security, or additional

19 security, in a sum the court directs to pay all costs, expenses, and

20 disbursements that are awarded against that party or that the

21 party may be directed to pay by any interlocutory order, by the

22 final judgment, or on appeal.

23 (i) Any person who violates the terms of an injunction issued

24 under subsection (f) shall forfeit and pay to the state a civil penalty

25 of not more than fifteen thousand dollars (\$15,000) per violation.

26 For the purposes of this section, the court issuing the injunction

27 shall retain jurisdiction, the cause shall be continued, and the

28 attorney general acting in the name of the state may petition for

29 recovery of civil penalties. Whenever the court determines that an

30 injunction issued under subsection (f) has been violated, the court

31 shall award reasonable costs to the state.

32 **Sec. 6. This chapter does not limit the rights or remedies that**

33 **are otherwise available to a senior consumer under any other**

34 **applicable provision of law.**

35 SECTION 2. IC 24-5-0.5-2, AS AMENDED BY P.L.226-2011,

36 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

37 JULY 1, 2013]: Sec. 2. (a) As used in this chapter:

- 38 (1) "Consumer transaction" means a sale, lease, assignment,
- 39 award by chance, or other disposition of an item of personal
- 40 property, real property, a service, or an intangible, except
- 41 securities and policies or contracts of insurance issued by
- 42 corporations authorized to transact an insurance business under

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1 the laws of the state of Indiana, with or without an extension of
 2 credit, to a person for purposes that are primarily personal,
 3 familial, charitable, agricultural, or household, or a solicitation to
 4 supply any of these things. However, the term includes the
 5 following:

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

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

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

14 (2) "Person" means an individual, corporation, the state of Indiana
 15 or its subdivisions or agencies, business trust, estate, trust,
 16 partnership, association, nonprofit corporation or organization, or
 17 cooperative or any other legal entity.

18 (3) "Supplier" means the following:

19 (A) A seller, lessor, assignor, or other person who regularly
 20 engages in or solicits consumer transactions, including
 21 soliciting a consumer transaction by using a telephone
 22 facsimile machine to transmit an unsolicited advertisement.
 23 The term includes a manufacturer, wholesaler, or retailer,
 24 whether or not the person deals directly with the consumer.

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

28 (C) A debt collector.

29 (4) "Subject of a consumer transaction" means the personal
 30 property, real property, services, or intangibles offered or
 31 furnished in a consumer transaction.

32 (5) "Cure" as applied to a deceptive act, means either:

33 (A) to offer in writing to adjust or modify the consumer
 34 transaction to which the act relates to conform to the
 35 reasonable expectations of the consumer generated by such
 36 deceptive act and to perform such offer if accepted by the
 37 consumer; or

38 (B) to offer in writing to rescind such consumer transaction
 39 and to perform such offer if accepted by the consumer.

40 The term includes an offer in writing of one (1) or more items of
 41 value, including monetary compensation, that the supplier
 42 delivers to a consumer or a representative of the consumer if

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- 1 accepted by the consumer.
- 2 (6) "Offer to cure" as applied to a deceptive act is a cure that:
- 3 (A) is reasonably calculated to remedy a loss claimed by the
- 4 consumer; and
- 5 (B) includes a minimum additional amount that is the greater
- 6 of:
- 7 (i) ten percent (10%) of the value of the remedy under
- 8 clause (A), but not more than four thousand dollars
- 9 (\$4,000); or
- 10 (ii) five hundred dollars (\$500);
- 11 as compensation for attorney's fees, expenses, and other costs
- 12 that a consumer may incur in relation to the deceptive act.
- 13 (7) "Uncured deceptive act" means a deceptive act:
- 14 (A) with respect to which a consumer who has been damaged
- 15 by such act has given notice to the supplier under section 5(a)
- 16 of this chapter; and
- 17 (B) either:
- 18 (i) no offer to cure has been made to such consumer within
- 19 thirty (30) days after such notice; or
- 20 (ii) the act has not been cured as to such consumer within a
- 21 reasonable time after the consumer's acceptance of the offer
- 22 to cure.
- 23 (8) "Incurable deceptive act" means a deceptive act done by a
- 24 supplier as part of a scheme, artifice, or device with intent to
- 25 defraud or mislead. The term includes a failure of a transferee of
- 26 structured settlement payment rights to timely provide a true and
- 27 complete disclosure statement to a payee as provided under
- 28 IC 34-50-2 in connection with a direct or indirect transfer of
- 29 structured settlement payment rights.
- 30 (9) "Pyramid promotional scheme" means any program utilizing
- 31 a pyramid or chain process by which a participant in the program
- 32 gives a valuable consideration exceeding one hundred dollars
- 33 (\$100) for the opportunity or right to receive compensation or
- 34 other things of value in return for inducing other persons to
- 35 become participants for the purpose of gaining new participants
- 36 in the program. The term does not include ordinary sales of goods
- 37 or services to persons who are not purchasing in order to
- 38 participate in such a scheme.
- 39 (10) "Promoting a pyramid promotional scheme" means:
- 40 (A) inducing or attempting to induce one (1) or more other
- 41 persons to become participants in a pyramid promotional
- 42 scheme; or

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- 1 (B) assisting another in promoting a pyramid promotional
- 2 scheme.
- 3 (11) "~~Elderly person~~" "**Senior consumer**" means an individual
- 4 who is at least ~~sixty-five (65)~~ **sixty (60)** years of age.
- 5 (12) "Telephone facsimile machine" means equipment that has
- 6 the capacity to transcribe text or images, or both, from:
- 7 (A) paper into an electronic signal and to transmit that signal
- 8 over a regular telephone line; or
- 9 (B) an electronic signal received over a regular telephone line
- 10 onto paper.
- 11 (13) "Unsolicited advertisement" means material advertising the
- 12 commercial availability or quality of:
- 13 (A) property;
- 14 (B) goods; or
- 15 (C) services;
- 16 that is transmitted to a person without the person's prior express
- 17 invitation or permission, in writing or otherwise.
- 18 (14) "Debt" has the meaning set forth in 15 U.S.C. 1692a(5)).
- 19 (15) "Debt collector" has the meaning set forth in 15 U.S.C.
- 20 1692a(6). The term does not include a person admitted to the
- 21 practice of law in Indiana if the person is acting within the course
- 22 and scope of the person's practice as an attorney.
- 23 (b) As used in section 3(a)(15) and 3(a)(16) of this chapter:
- 24 (1) "Directory assistance" means the disclosure of telephone
- 25 number information in connection with an identified telephone
- 26 service subscriber by means of a live operator or automated
- 27 service.
- 28 (2) "Local telephone directory" refers to a telephone classified
- 29 advertising directory or the business section of a telephone
- 30 directory that is distributed by a telephone company or directory
- 31 publisher to subscribers located in the local exchanges contained
- 32 in the directory. The term includes a directory that includes
- 33 listings of more than one (1) telephone company.
- 34 (3) "Local telephone number" refers to a telephone number that
- 35 has the three (3) number prefix used by the provider of telephone
- 36 service for telephones physically located within the area covered
- 37 by the local telephone directory in which the number is listed. The
- 38 term does not include long distance numbers or 800-, 888-, or
- 39 900- exchange numbers listed in a local telephone directory.
- 40 SECTION 3. IC 24-5-0.5-4, AS AMENDED BY P.L.226-2011,
- 41 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 42 JULY 1, 2013]: Sec. 4. (a) A person relying upon an uncured or

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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 (j), the court may award reasonable
 10 attorney 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(a)(20) of
 17 this chapter. This subsection also does not apply to a violation of
 18 IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a
 19 person under this section have priority over any civil penalty imposed
 20 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 (j), the court may
 28 award reasonable attorney 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(a)(20) of this
 41 chapter. Actual damages awarded to a class have priority over any civil
 42 penalty imposed under this chapter.



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1 (c) The attorney general may bring an action to enjoin a deceptive
2 act, including a deceptive act described in section 3(a)(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,**
12 **increase the amount of restitution ordered under subdivision**
13 **(2) in any amount up to three (3) times the amount of damages**
14 **incurred or value of property or assets lost;**
- 15 ~~(3)~~ (4) order the supplier to pay to the state the reasonable costs
16 of the attorney general's investigation and prosecution related to
17 the action; and
- 18 ~~(4)~~ (5) provide for the appointment of a receiver.

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

22 (e) In any action under subsection (a) or (b), upon the filing of the
23 complaint or on the appearance of any defendant, claimant, or any
24 other party, or at any later time, the trial court, the supreme court, or the
25 court of appeals may require the plaintiff, defendant, claimant, or any
26 other party or parties to give security, or additional security, in such
27 sum as the court shall direct to pay all costs, expenses, and
28 disbursements that shall be awarded against that party or which that
29 party may be directed to pay by any interlocutory order by the final
30 judgment or on appeal.

31 (f) Any person who violates the terms of an injunction issued under
32 subsection (c) shall forfeit and pay to the state a civil penalty of not
33 more than fifteen thousand dollars (\$15,000) per violation. For the
34 purposes of this section, the court issuing an injunction shall retain
35 jurisdiction, the cause shall be continued, and the attorney general
36 acting in the name of the state may petition for recovery of civil
37 penalties. Whenever the court determines that an injunction issued
38 under subsection (c) has been violated, the court shall award
39 reasonable costs to the state.

40 (g) If a court finds any person has knowingly violated section 3 or
41 10 of this chapter, other than section 3(a)(19) or 3(a)(20) of this
42 chapter, the attorney general, in an action pursuant to subsection (c),

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1 may recover from the person on behalf of the state a civil penalty of a
2 fine not exceeding five thousand dollars (\$5,000) per violation.

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

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

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

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

14 (i) ~~An elderly person~~ **A senior consumer** relying upon an uncured
15 or incurable deceptive act, including an act related to hypnotism, may
16 bring an action to recover treble damages, if appropriate.

17 (j) An offer to cure is:

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

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

25 If the offer to cure is timely delivered by the supplier, the supplier may
26 submit the offer to cure as evidence to prove in the proceeding in
27 accordance with the Indiana Rules of Trial Procedure that the supplier
28 made an offer to cure.

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

34 (l) If a court finds that a person has knowingly violated section
35 3(a)(20) of this chapter, the attorney general, in an action under
36 subsection (c), may recover from the person on behalf of the state a
37 civil penalty not exceeding one thousand dollars (\$1,000) per
38 consumer. In determining the amount of the civil penalty in any action
39 by the attorney general under this subsection, the court shall consider,
40 among other relevant factors, the frequency and persistence of
41 noncompliance by the debt collector, the nature of the noncompliance,
42 and the extent to which the noncompliance was intentional. A person

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1 may not be held liable in any action by the attorney general for a
2 violation of section 3(a)(20) of this chapter if the person shows by a
3 preponderance of evidence that the violation was not intentional and
4 resulted from a bona fide error, notwithstanding the maintenance of
5 procedures reasonably adapted to avoid the error. A person may not be
6 held liable in any action for a violation of this chapter for contacting a
7 person other than the debtor, if the contact is made in compliance with
8 the Fair Debt Collection Practices Act.

9 SECTION 4. [EFFECTIVE UPON PASSAGE] (a) **The general
10 assembly urges the legislative council to assign to an interim or
11 statutory study committee, for study during the 2013 legislative
12 interim, the topic of a supplier discriminating against consumers
13 based on the price of promotion of goods to retailers by refusing to
14 sell to a retailer a good at the same price that the supplier sells the
15 good to any other retailer.**

16 (b) **If the topic described in subsection (a) is assigned to an
17 interim or statutory study committee under subsection (a), the
18 study committee shall:**

19 (1) **consider whether a supplier should be prohibited from
20 discriminating against consumers by charging retailers higher
21 prices based on the type of retailer or the demographic of the
22 customer served;**

23 (2) **consider why suppliers refuse to sell value packaged goods
24 to certain retailers and sell only reduced sizes with higher per
25 ounce costs to certain retailers;**

26 (3) **consider why suppliers increase the price of goods to
27 consumers who shop at certain retailers even if the retailers
28 purchase identical volumes and are similarly situated as other
29 retailers;**

30 (4) **consider why certain retailers may purchase goods in bulk
31 when the opportunity to do so is denied to other retailers that
32 may be buying the same or a larger amount of goods;**

33 (5) **recommend the appropriate remedy if a cause of action
34 exists; and**

35 (6) **recommend whether the attorney general should be
36 involved in a cause of action if a cause of action exists under
37 subdivision (1).**

38 (c) **If the topic described in subsection (a) is assigned to an
39 interim or statutory study committee, the study committee shall
40 issue a final report to the legislative council containing the study
41 committee's findings and recommendations, including any
42 recommended legislation concerning the topic, not later than**

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1 **November 1, 2013.**
2 **(d) This SECTION expires December 31, 2013.**
3 **SECTION 5. An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 382, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 382 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 382 be amended to read as follows:

Page 1, line 5, after "1." insert "**(a)**".

Page 1, between lines 6 and 7, begin a new paragraph and insert:

"(b) This chapter does not apply to deception, intimidation, or other exploitation of a senior consumer in relation to insurance coverage or an insurance product that is regulated by the Indiana department of insurance. A senior consumer who is a victim of an act that is:

**(1) described in section 4(a) or 4(b) of this chapter; and
(2) related to insurance coverage or an insurance product;
may report the act to the Indiana department of insurance for action by the insurance commissioner under IC 27. If the insurance commissioner determines that the person who committed the act is not subject to regulation by the Indiana department of insurance, the insurance commissioner shall immediately refer the senior consumer to the attorney general and the senior consumer may pursue remedies available under this chapter."**

(Reference is to SB 382 as printed February 13, 2013.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 382, 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 2, between lines 3 and 4, begin a new paragraph and insert:

"(c) This chapter does not apply to the exploitation of a senior consumer in relation to securities fraud that is regulated by the secretary of state's office. A senior consumer who is a victim of an act that is:

- (1) described in section 4(a) or 4(b) of this chapter; and**
- (2) related to the Indiana uniform securities act under IC 23-19;**

shall report the act to the secretary of state under IC 23-19. If the secretary of state's office determines the person who committed the act is not subject to the regulation of the secretary of state's office, the secretary of state's office shall immediately refer the senior consumer to the attorney general and the senior consumer may pursue remedies available under this chapter."

Page 2, line 7, delete "simply," and insert "**simplify**,".

Page 2, line 15, delete "concealment" and insert "**omission**".

Page 2, line 26, delete "he or she" and insert "**the senior consumer**".

Page 3, line 6, delete "he or she" and insert "**the person**".

Page 11, after line 37, begin a new paragraph and insert:

"SECTION 4. [EFFECTIVE UPON PASSAGE] (a) The general assembly urges the legislative council to assign to an interim or statutory study committee, for study during the 2013 legislative interim, the topic of a supplier discriminating against consumers based on the price of promotion of goods to retailers by refusing to sell to a retailer a good at the same price that the supplier sells the good to any other retailer.

(b) If the topic described in subsection (a) is assigned to an interim or statutory study committee under subsection (a), the study committee shall:

- (1) consider whether a supplier should be prohibited from discriminating against consumers by charging retailers higher prices based on the type of retailer or the demographic of the customer served;**
- (2) consider why suppliers refuse to sell value packaged goods to certain retailers and sell only reduced sizes with higher per**

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ounce costs to certain retailers;

(3) consider why suppliers increase the price of goods to consumers who shop at certain retailers even if the retailers purchase identical volumes and are similarly situated as other retailers;

(4) consider why certain retailers may purchase goods in bulk when the opportunity to do so is denied to other retailers that may be buying the same or a larger amount of goods;

(5) recommend the appropriate remedy if a cause of action exists; and

(6) recommend whether the attorney general should be involved in a cause of action if a cause of action exists under subdivision (1).

(c) If the topic described in subsection (a) is assigned to an interim or statutory study committee, the study committee shall issue a final report to the legislative council containing the study committee's findings and recommendations, including any recommended legislation concerning the topic, not later than November 1, 2013.

(d) This SECTION expires December 31, 2013.

SECTION 5. An emergency is declared for this act."

and when so amended that said bill do pass.

(Reference is to SB 382 as reprinted February 19, 2013.)

STEUERWALD, Chair

Committee Vote: yeas 6, nays 1.

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