HOUSE BILL No. 1321

DIGEST OF INTRODUCED BILL

Citations Affected:  IC 24-5; IC 35-31.5-2; IC 35-46-8.2.

Synopsis:  GPS devices and starter interrupter devices. Prohibits the installation, placement, or attachment of a GPS device or a starter interrupter device in, on, or to a motor vehicle by a lienholder in connection with the potential or actual: (1) enforcement of the lienholder's interest in the motor vehicle; or (2) repossession of the motor vehicle; without the written and signed consent of the owner of the motor vehicle. Provides that a violation of these provisions is a deceptive act for purposes of the deceptive consumer sales act. Establishes as Class A misdemeanors the related criminal offenses of: (1) lienholder vehicular stalking; (2) lienholder vehicular disablement; and (3) unlawful vehicular tracking. Sets forth the elements of these offenses.

Effective:  July 1, 2019.

Jackson

January 14, 2019, read first time and referred to Committee on Roads and Transportation.
HOUSE BILL No. 1321

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:

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

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

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

(2) That such subject of a consumer transaction is of a particular
standard, quality, grade, style, or model, if it is not and if the
supplier knows or should reasonably know that it is not.
(3) That such subject of a consumer transaction is new or unused,
if it is not and if the supplier knows or should reasonably know
that it is not.
(4) That such subject of a consumer transaction will be supplied
to the public in greater quantity than the supplier intends or
reasonably expects.
(5) That replacement or repair constituting the subject of a
consumer transaction is needed, if it is not and if the supplier
knows or should reasonably know that it is not.
(6) That a specific price advantage exists as to such subject of a
consumer transaction, if it does not and if the supplier knows or
should reasonably know that it does not.
(7) That the supplier has a sponsorship, approval, or affiliation in
such consumer transaction the supplier does not have, and which
the supplier knows or should reasonably know that the supplier
does not have.
(8) That such consumer transaction involves or does not involve
a warranty, a disclaimer of warranties, or other rights, remedies,
or obligations, if the representation is false and if the supplier
knows or should reasonably know that the representation is false.
(9) That the consumer will receive a rebate, discount, or other
benefit as an inducement for entering into a sale or lease in return
for giving the supplier the names of prospective consumers or
otherwise helping the supplier to enter into other consumer
transactions, if earning the benefit, rebate, or discount is
contingent upon the occurrence of an event subsequent to the time
the consumer agrees to the purchase or lease.
(10) That the supplier is able to deliver or complete the subject of
the consumer transaction within a stated period of time, when the
supplier knows or should reasonably know the supplier could not.
If no time period has been stated by the supplier, there is a
presumption that the supplier has represented that the supplier
will deliver or complete the subject of the consumer transaction
within a reasonable time, according to the course of dealing or the
usage of the trade.
(11) That the consumer will be able to purchase the subject of the
consumer transaction as advertised by the supplier, if the supplier
does not intend to sell it.
(12) That the replacement or repair constituting the subject of a
consumer transaction can be made by the supplier for the estimate
the supplier gives a customer for the replacement or repair, if the
specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or
greater than ten percent (10%) of the estimate;
(B) the supplier did not obtain written permission from the
customer to authorize the supplier to complete the work even
if the cost would exceed the amounts specified in clause (A);
(C) the total cost for services and parts for a single transaction
is more than seven hundred fifty dollars ($750); and
(D) the supplier knew or reasonably should have known that
the cost would exceed the estimate in the amounts specified in
clause (A).

(13) That the replacement or repair constituting the subject of a
consumer transaction is needed, and that the supplier disposes of
the part repaired or replaced earlier than seventy-two (72) hours
after both:

(A) the customer has been notified that the work has been
completed; and
(B) the part repaired or replaced has been made available for
examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a
consumer transaction if the consumer has not authorized the
replacement or repair, and if the supplier knows or should
reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the
supplier by listing an alternate business name or an assumed
business name (as described in IC 23-0.5-3-4) in a local telephone
directory if:

(A) the name misrepresents the supplier's geographic location;
(B) the listing fails to identify the locality and state of the
supplier's business;
(C) calls to the local telephone number are routinely forwarded
or otherwise transferred to a supplier's business location that
is outside the calling area covered by the local telephone
directory; and
(D) the supplier's business location is located in a county that
is not contiguous to a county in the calling area covered by the
local telephone directory.

(16) The act of listing an alternate business name or assumed
business name (as described in IC 23-0.5-3-4) in a directory
assistance data base if:

(A) the name misrepresents the supplier's geographic location;
(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and
(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) The violation by a supplier of IC 24-3-4 concerning cigarettes for import or export.

(18) The act of a supplier in knowingly selling or reselling a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer, unless the product has been repaired or modified to correct the defect that was the subject of the recall.


(21) A violation of IC 24-5-7 (concerning health spa services), as set forth in IC 24-5-7-17.

(22) A violation of IC 24-5-8 (concerning business opportunity transactions), as set forth in IC 24-5-8-20.

(23) A violation of IC 24-5-10 (concerning home consumer transactions), as set forth in IC 24-5-10-18.

(24) A violation of IC 24-5-11 (concerning real property improvement contracts), as set forth in IC 24-5-11-14.

(25) A violation of IC 24-5-12 (concerning telephone solicitations), as set forth in IC 24-5-12-23.


(28) A violation of IC 24-5-15 (concerning credit services organizations), as set forth in IC 24-5-15-11.

(29) A violation of IC 24-5-16 (concerning unlawful motor vehicle subleasing), as set forth in IC 24-5-16-18.

(30) A violation of IC 24-5-17 (concerning environmental marketing claims), as set forth in IC 24-5-17-14.

(31) A violation of IC 24-5-19 (concerning deceptive commercial solicitation), as set forth in IC 24-5-19-11.

(32) A violation of IC 24-5-21 (concerning prescription drug
discount cards), as set forth in IC 24-5-21-7.

(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.

(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

(38) A violation of IC 24-5-16.7 (concerning the installation, placement, or attachment of a GPS device or a starter interrupter device in, on, or to a motor vehicle), as set forth in IC 24-5-16.7-7.

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

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

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

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

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

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

SECTION 2. IC 24-5-16.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 16.7. Use of GPS Devices and Starter Interrupter Devices in Motor Vehicles

Sec. 1. This chapter does not apply to the following:
(1) A motor vehicle manufacturer or a person, acting within the scope of the person's employment, who installs an in-vehicle communication or telematics system.
(2) A person who installs, places, or attaches at the request of the owner of a motor vehicle subject to a lien:
   (A) a GPS device; or
   (B) a starter interrupter device;
   in, on, or to the motor vehicle.
(3) A law enforcement officer acting in the officer's official capacity.
(4) A parent or guardian who:
   (A) installs, places, or attaches a GPS device in, on, or to a motor vehicle in order to track the location of the parent's or guardian's minor child; or
   (B) obtains GPS device information concerning the location of the parent's or guardian's minor child.
(5) An employer or business owner tracking the movement or location of a motor vehicle owned, leased, or assigned for use by the employer or business owner.

Sec. 2. As used in this chapter, "GPS device" means an electronic device or software program that permits the tracking of a person or object by means of global positioning system coordinates.

Sec. 3. (a) As used in this chapter, "lienholder", with respect to a motor vehicle, means a person that has an interest in the motor vehicle, which interest secures the payment or performance of an obligation owed to the person by the owner of the motor vehicle.
(b) The term includes an agent of the lienholder.

Sec. 4. As used in this chapter, "motor vehicle" means a private passenger motor vehicle primarily designed for transporting passengers. The term includes passenger vans and minivans that are primarily designed for transporting passengers.

Sec. 5. As used in this chapter, "starter interrupter device" means a mechanism that:

(1) is installed in a motor vehicle; and
(2) when activated by remote control will prevent the motor vehicle from starting.

Sec. 6. (a) A lienholder shall not install, place, or attach (or cause the installation, placement, or attachment of) a GPS device in, on, or to a motor vehicle for the purpose of tracking the location of the motor vehicle in connection with the potential or actual:

(1) enforcement of the lienholder's interest in the motor vehicle; or
(2) repossession of the motor vehicle.

(b) A lienholder shall not install, place, or attach (or cause the installation, placement, or attachment of) a starter interrupter device in, on, or to a motor vehicle for the purpose of disabling the motor vehicle in connection with the potential or actual:

(1) enforcement of the lienholder's interest in the motor vehicle; or
(2) repossession of the motor vehicle.

Sec. 7. A person who violates section 6 of this chapter commits a deceptive act that is actionable by the attorney general or by a consumer under IC 24-5-0.5-4 and is subject to the remedies and penalties set forth in IC 24-5-0.5.

SECTION 3. IC 35-31.5-2-145.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 145.5. "GPS device", for purposes of IC 35-46-8.2, has the meaning set forth in IC 35-46-8.2-2.

SECTION 4. IC 35-31.5-2-186.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 186.7. "Lienholder", for purposes of IC 35-46-8.2, has the meaning set forth in IC 35-46-8.2-3.

SECTION 5. IC 35-31.5-2-207, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 207. (a) "Motor vehicle" has the meaning set forth
in IC 9-13-2-105(a).
(b) "Motor vehicle", for purposes of IC 35-46-8.2, has the meaning set forth in IC 35-46-8.2-4.

SECTION 6. IC 35-31.5-2-310.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 310.5. "Starter interrupter device", for purposes of IC 35-46-8.2, has the meaning set forth in IC 35-46-8.2-5.

SECTION 7. IC 35-46-8.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 8.2. GPS Devices and Starter Interrupter Devices
Sec. 1. This chapter does not apply to the following:
(1) A motor vehicle manufacturer or a person, acting within the scope of the person's employment, who installs an in-vehicle communication or telematics system.
(2) A person who installs, places, or attaches at the request of the owner of a motor vehicle subject to a lien:
   (A) a GPS device; or
   (B) a starter interrupter device;
   in, on, or to the motor vehicle.
(3) A law enforcement officer acting in the officer's official capacity.
(4) A parent or guardian who:
   (A) installs, places, or attaches a GPS device in, on, or to a motor vehicle in order to track the location of the parent's or guardian's minor child; or
   (B) obtains GPS device information concerning the location of the parent's or guardian's minor child.
(5) An employer or business owner tracking the movement or location of a motor vehicle owned, leased, or assigned for use by the employer or business owner.

Sec. 2. As used in this chapter, "GPS device" means an electronic device or software program that permits the tracking of a person or object by means of global positioning system coordinates.

Sec. 3. (a) As used in this chapter, "lienholder", with respect to a motor vehicle, means a person that has an interest in the motor vehicle, which interest secures the payment or performance of an obligation owed to the person by the owner of the motor vehicle.
(b) The term includes an agent of the lienholder.

Sec. 4. As used in this chapter, "motor vehicle" means a private
passenger motor vehicle primarily designed for transporting passengers. The term includes passenger vans and minivans that are primarily designed for transporting passengers.

Sec. 5. As used in this chapter, "starter interrupter device" means a mechanism that:

1. is installed in a motor vehicle; and
2. when activated by remote control will prevent the motor vehicle from starting.

Sec. 6. A person:

1. who is a lienholder with respect to a motor vehicle; and
2. who:
   (A) acting to track the location of the motor vehicle in connection with the potential or actual:
      (i) enforcement of the lienholder's interest in the motor vehicle; or
      (ii) repossession of the motor vehicle; and
   (B) without the written and signed consent of the owner of the motor vehicle;

knowingly or intentionally installs, places, or attaches (or causes the installation, placement, or attachment of) a GPS device in, on, or to the motor vehicle;

commits lienholder vehicular stalking, a Class A misdemeanor.

Sec. 7. A person:

1. who is a lienholder with respect to a motor vehicle; and
2. who:
   (A) acting in connection with the potential or actual:
      (i) enforcement of the lienholder's interest in the motor vehicle; or
      (ii) repossession of the motor vehicle; and
   (B) without the written and signed consent of the owner of the motor vehicle;

knowingly or intentionally installs, places, or attaches (or causes the installation, placement, or attachment of) a starter interrupter device in, on, or to the motor vehicle;

commits lienholder vehicular disablement, a Class A misdemeanor.

Sec. 8. A person who:

1. knowingly or intentionally obtains information concerning a motor vehicle's movement or location through the use of a GPS device; and
2. knows that the GPS device or has been installed, placed, or attached in, on, or to the motor vehicle in violation of section 6 of this chapter;
commits unlawful vehicular tracking, a Class A misdemeanor.