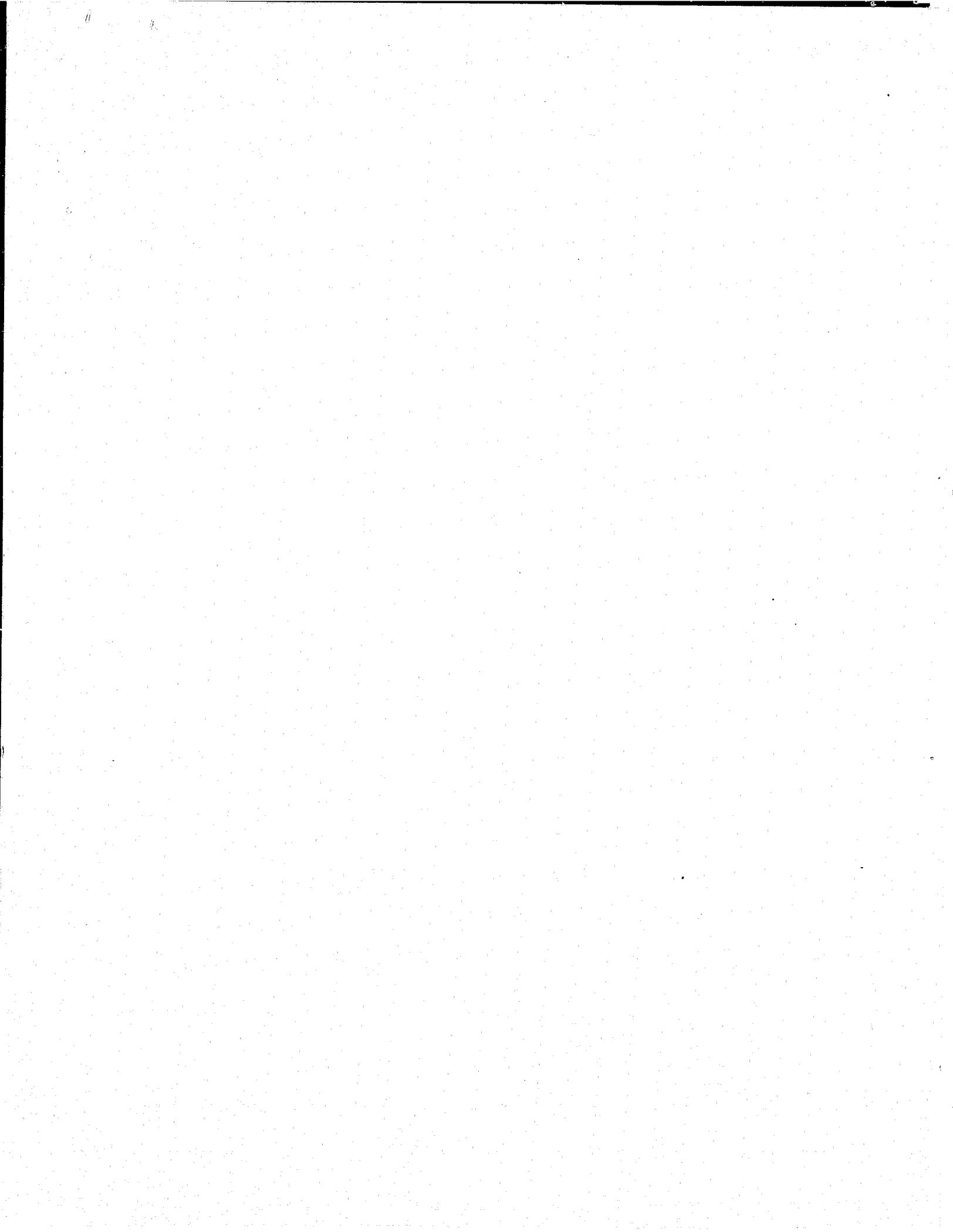


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# CONSUMER PROTECTION IN INDIANA

A Message from your  
Attorney General

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ACQUISITIONS

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Theodore L. Sendak  
Attorney General  
219 State House  
Indianapolis, Indiana  
46204

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Dear Consumer,

As many of you may now know, the 1971 Indiana Legislature created a Consumer Protection Division in the office of the Indiana Attorney General. This Division is charged with investigating and resolving all legitimate consumer complaints which meet the requirements set out in this pamphlet.

This pamphlet is designed to provide some details of P.L. 367, IC 24-5-0.5, the Indiana "deceptive consumer sales act". It is further designed to advise you how to file a consumer complaint with the Attorney General. If you are not sure whether your complaint qualifies after reading this pamphlet, submit your written complaint to our consumer protection staff for review and investigation.

Do you have a legitimate consumer complaint? If you think you might, read on, and then write to us with all the details. We look forward to helping you.

Yours truly,

Theodore L. Sendak  
Attorney General

This brochure was prepared by the staff of the Consumer Protection Division, Office of the Attorney General.

David A Miller, Director  
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317-633-6276 Indianapolis  
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800-382-5516 (Toll Free Long Distance  
within Indiana outside of  
Indianapolis)

## WHAT IS THE CONSUMER PROTECTION DIVISION?

The 1971 Indiana Legislature created the Consumer Protection Division in the Office of Attorney General Theodore L. Sendak. This division was given the authority to receive, review, investigate, mediate, and resolve legitimate consumer complaints. The Division also acts as a clearing house for consumer complaints, and as such refers problems to related agencies. In addition, the Attorney General was given the right to seek court injunctions to prevent individuals and companies from further engaging in deceptive practices when such action is in the public interest. As part of the injunction the court has the power to void contracts in full or in part.

In some instances, only a private attorney can handle a consumer's problem.

## CAN WE PROCESS YOUR COMPLAINT?

For the Consumer Protection Division to investigate your complaint, the following requirements should be met:

1. *There must be a "consumer transaction".* This means:
  - (a) a sale, lease, assignment, award by chance, or other disposition of (or any solicitation to supply)
  - (b) a good, service, or intangible (except securities and policies or contracts of insurance),
  - (c) to an individual for purposes that are primarily personal, family, or household.
2. *The consumer transaction must be between an individual and a "supplier" or merchant, who regularly engages in or solicits consumer transactions.*
3. *A deceptive act must have occurred.*

## WHAT IS A "DECEPTIVE ACT"?

Public Law 367 Sec. 3 (a), effective September 3, 1971, declares the following to be deceptive acts when represented orally or in writing by a "supplier" or merchant:

- (a) 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;

**EXAMPLE:** Representing that a course of study, when completed, will guarantee the student employment when it will not.

**EXAMPLE:** Representing that a product ordered by mail will be received by the consumer for use by a particular date when it will not.

- (b) 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;

**EXAMPLE:** Representing that freezer meat is a prime grade when it is not.

**EXAMPLE:** Representing a used automobile has low mileage, when the odometer has been turned back to reflect less than actual mileage.

- (c) 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;

**EXAMPLE:** Representing a home appliance is new, when in fact it is a "demonstrator", a "floor model", or a used "repossessed" appliance.

**EXAMPLE:** Representing an appliance is new, when it is reconditioned or remanufactured.

- (d) that such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects;

**EXAMPLE:** Advertising tires at a bargain price without disclosing that the quantities are limited, and, as to chain stores, not disclosing that the bargain is not available at all locations.

- (e) 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;

**EXAMPLE:** Representing that a furnace must be repaired or replaced because it is about to "blow up" when minor or no repairs are needed.

**EXAMPLE:** Representing that termite treatment is needed when NO such need exists.

- (f) 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;

**EXAMPLE:** Offering goods at a "reduced" or "sale" price when that price is not less than the supplier's bona fide selling price as established by sales or legitimate offerings in the recent past.

**EXAMPLE:** Representing that by purchasing one product the consumer will receive a second product free when the price for the first good is inflated to cover the price or cost of the second.

- (g) that the supplier has a sponsorship, approval or affiliation in such consumer transaction that he does not have, and which the supplier knows or should reasonably know that he does not have;

**EXAMPLE:** Representation by the supplier that he is an "authorized" dealer for a product when he is not.

**EXAMPLE:** Representation by a supplier that he is a public agency or government affiliate when he is not.

- (h) 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;

**EXAMPLE:** Representing that a product is fully guaranteed, when it is not.

**EXAMPLE:** Representing that a deposit or enrollment fee shall be refunded upon request, when such is not the case.

- (i) 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 is contingent on a sale or lease occurring after the consumer enters into the original consumer transaction.

**EXAMPLE:** Inducing a consumer to buy a vacuum sweeper with a promise that for each name of a prospective buyer the consumer gives to the supplier, which results in a sale, the consumer will receive \$25 off the purchase price.

### **SUPPLIER-MERCHANT DEFENSES**

An act is not deceptive if the supplier can show by a preponderance of the evidence the act occurred as a result of a bona fide error, notwithstanding maintenance of procedures reasonably adopted to avoid such error.

### **CONSUMER RIGHT TO SUE**

Under P.L. 367 consumers are given a right to recover for damages suffered as a consumer as a result of a deceptive act. Attorney fees can be awarded by the court to the prevailing party. Further, a class action may be brought subject to the terms of P.L. 367 and pursuant to the Indiana Rules of Procedure.

Section 5 of P.L. 367, and other provisions therein, condition the time and manner by which individual and class actions must be brought. Contact your own attorney for advice as to how such actions may be brought.

### **ATTORNEY GENERAL'S RIGHT TO SUE**

Under P.L. 367, the Indiana Attorney General may bring a civil action to enjoin a deceptive act.

## HOW TO FILE YOUR COMPLAINT

If you have a legitimate consumer complaint, the Office of the Attorney General, Consumer Protection Division, recommends the following:

1. If a crime may have been committed, contact your County Prosecuting Attorney;
2. *Always* try to settle the complaint by contacting the merchant, his superiors, or the company;
3. If unsuccessful, it is suggested you seek help from your local sources of assistance such as a Better Business Bureau, Chamber of Commerce, Merchants' Association, County Extension Agent, Labor Union, etc.;
4. If you receive no relief, or choose not to work through the local sources, send your written complaint with supporting documents to:

Theodore L. Sendak,  
Attorney General of Indiana  
Consumer Protection Division  
219 State House  
Indianapolis, Indiana 46204.

The legislation under which the Consumer Protection Division operates requires that if your complaint indicates a violation by the supplier of a statute, rule or regulation enforced by another state or federal department or agency, the Division must refer your complaint to that department or agency and request it be investigated. This *does not* relieve the Consumer Protection Division of its duty to attempt to resolve the problem. Thus this office is a *statutory* clearing house which must call your consumer complaint to the attention of other governmental agencies for assistance.

There is no charge for the services of the Consumer Protection Division of the Office of the Attorney General. It is the official state agency created by the 1971 Legislature to protect consumers with legitimate complaints. As public servants, we look forward to helping you.

## SUPPLEMENT TO "CONSUMER PROTECTION IN INDIANA"

The 1978 Indiana General Assembly enacted Public Law 127 which amended the Acts 1971, Public Law 367, as found at Indiana Code 24-5-0.5, the "deceptive consumer sales act".

The amendments to Public Law 367, effective July 1, 1978, add to the list of acts declared deceptive when represented orally or in writing by a "supplier" or merchant, the following:

- (a) 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 he could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that he 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; or

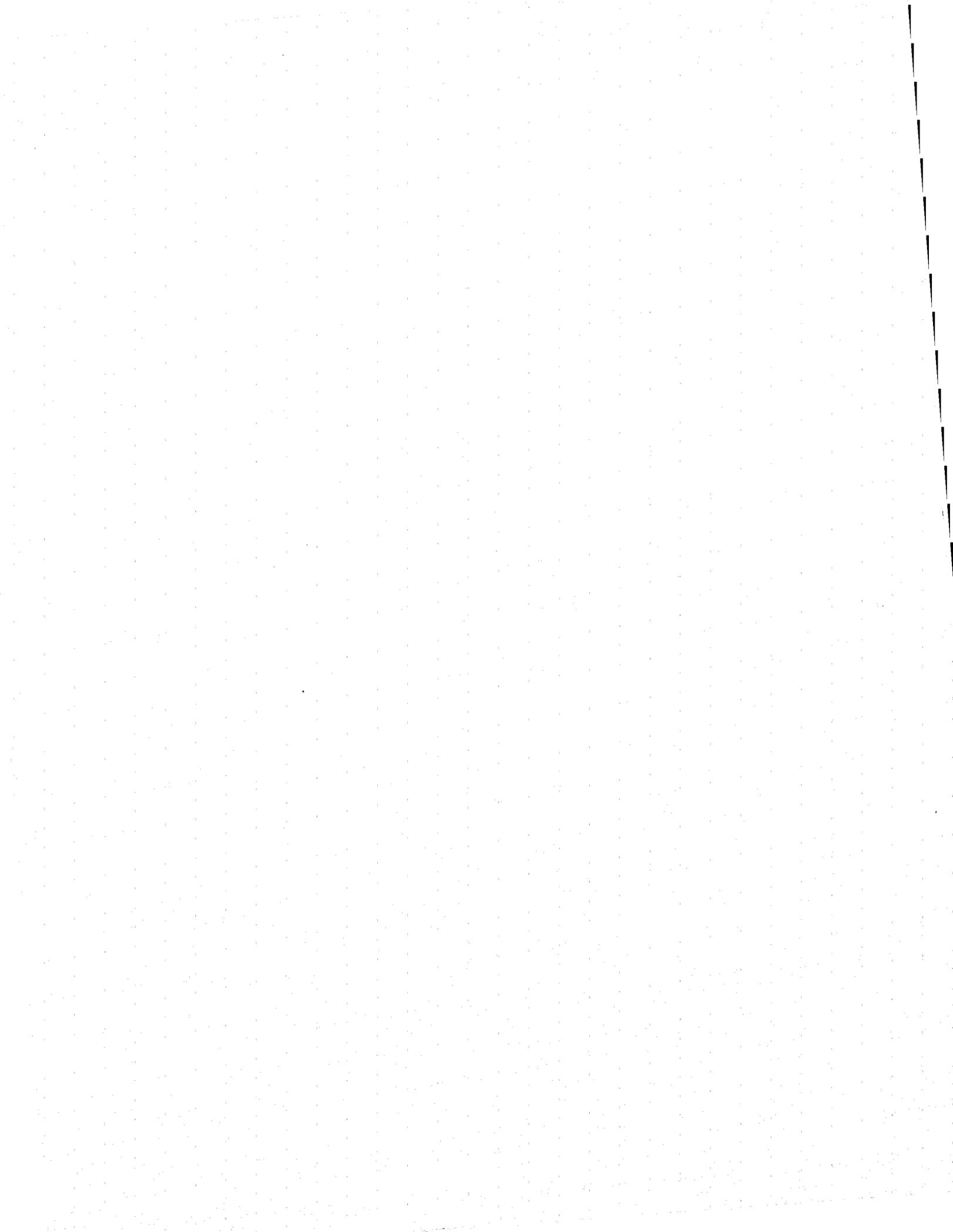
**EXAMPLE:** Representations by a door-to-door magazine salesman that the magazines will be received within six weeks when he knows that the magazine publisher cannot meet this deadline.

- (b) 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.

**EXAMPLE:** Advertising that St. Bernard puppies are for sale when the merchant only intends to sell mixed breed puppies.

**EXAMPLE:** Advertising that a picnic table is made of redwood when, in fact, it is constructed of redwood-stained pine.

Public Law 127 authorizes the court to impose a civil penalty of \$15,000 for each violation of an



injunction issued by a court based on an action initiated by the Attorney General pursuant to the "deceptive consumer sales act". Also, the new amendments provide that the Attorney General may accept an assurance of voluntary compliance from any person who was engaged in or is engaging in deceptive acts.

The law currently provides that a supplier or merchant who engages in a scheme, artifice, or device with intent to defraud or mislead commits an "incurable deceptive act." Public Law 127 of Acts 1978 provides that a supplier or merchant who commits an "incurable deceptive act" also commits a Class A Infraction (up to a \$10,000 fine). The amendments to Public Law 367 make it a Class A Infraction for a supplier organized primarily to provide benefits to persons from the cooperative purchase of goods (buying clubs) from offering a contract which would be effective for more than five years.

Finally, the amendments to Public Law 367 have resulted in a change in Section 3(a) of the "deceptive consumer sales act". Accordingly, (i) at the top of page 5 of the pamphlet "Consumer Protection In Indiana" should read, as follows:

- (i) 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;

**EXAMPLE:** Inducing a consumer to buy a vacuum sweeper with a promise that they will receive \$25 for each name given to the merchant, if such \$25 rebate or discount depends on an interview, demonstration or sale with the person whose name was given.

Copies of this pamphlet are available to the public at no charge, as are consumer complaint forms and copies of P.L. 367, IC 24-5-0.5, the Deceptive Consumer Sales Act, by writing to:

Theodore L. Sendak  
Attorney General of Indiana  
Consumer Protection Division  
219 State House  
Indianapolis, Indiana 46204.

May, 1977

**END**