

RECENT DEVELOPMENTS IN INDIANA CONSUMER LAW

MATTHEW W. CONRAD*

INTRODUCTION

This Article divides recent, significant developments that affect Indiana consumers into four major topics. Part I focuses on debtor-creditor relations; specifically, the “payday loan” industry and the interaction between Indiana civil procedure and the federal Fair Debt Collection Practices Act. Part II examines Indiana statutes regarding deceptive and unconscionable practices in the contexts of the sale of recalled products and software pricing. Part III discusses the issue of fuel price gouging. Finally, Part IV covers new legislation affecting residential tenants and landlords.

I. CREDITORS AND DEBTORS

A. Payday Loans

The Indiana General Assembly enacted legislation that effectively overruled the *Livingston v. Fast Cash USA, Inc.*¹ decision handed down by the Indiana Supreme Court during the previous Survey period. In *Livingston*, the court held that “payday loans” were subject to a statutory maximum annual percentage interest rate (“APR”) of 36%, notwithstanding another provision in the same statute that allows for a minimum finance charge of \$30.00 (indexed for inflation).²

The *Livingston* court explained the procedure of payday loans:

The borrower applies for a small loan and gives the lender a post-dated check in the amount of the loan principal plus a finance charge. Depending on the lender, the finance charge varies from \$15 to \$33. In return, the lender gives the borrower a loan in cash with payment due in a short period of time, usually two weeks. When the loan becomes due, the borrower either repays the lender in cash the amount of the loan plus the finance charge, or the lender deposits the borrower's check. If the borrower lacks sufficient funds to pay the loan when due, then the borrower may obtain a new loan for another two weeks incurring another finance charge.³

* Associate, Price, Jackson, Waicukauski & Mellowitz, P.C., Indianapolis. B.A., 1998, Indiana University, Bloomington; J.D., cum laude, 2002, Indiana University School of Law—Indianapolis.

1. 753 N.E.2d 572 (Ind. 2001).

2. *Id.* at 574, 575 & n.4, 577 (citing IND. CODE § 24-4.5-3-508 (1998)); *see also* Matthew T. Albaugh, *Indiana's Revised Article 9 and Other Developments in Commercial and Consumer Law*, 35 IND. L. REV. 1239, 1249-55 (2002).

3. 753 N.E.2d at 574.

The new legislation,⁴ which uses the term “small loans” to describe payday loans,⁵ provides that payday loan lenders may impose a 15% finance charge on the first \$100.00 of the loan and 10% on the portion of the loan exceeding \$100.00, subject to a maximum finance charge of \$35.00.⁶ Under this legislation, payday loans are exempt from the maximum APR and minimum finance charge statutory provisions that were at issue in *Livingston*.⁷

While these provisions may seem to favor the payday loan industry at the expense of consumers, the same legislation also provides consumers with some protections. For example, payday lenders must warn borrowers that such loans are “not intended to meet long term financial needs” and that the finance charges may exceed those associated with other types of loans.⁸ If a borrower renews a payday loan three times, “another small loan may not be made to that consumer within seven (7) days after the date of the third consecutive small loan unless the new small loan is for a term of twenty-eight (28) days or longer.”⁹ Furthermore, a payday loan may not be made “if the total payable amount of the small loan exceeds twenty percent (20%) of the consumer’s monthly net income,”¹⁰ and payday lenders may not issue loans to consumers who: a) already have an outstanding loan with the same lender; b) have one outstanding payday loan with another lender, if the total of the loans (including finance charges) exceeds \$400.00; or c) already have two outstanding payday loans.¹¹

Additional consumer protections in the payday loan legislation include prohibitions on, among other things: a) threatening criminal prosecution to collect an overdue payday loan; b) “[c]ontracting for and collecting attorney’s fees on [payday] loans”; c) payday loan agreements containing hold harmless

4. See Act of Mar. 14, 2002, Pub. L. 38-2002, 2002 Ind. Acts 779 (codified at IND. CODE §§ 24-4.5-7-101 to -414 (Supp. 2002)).

5. See IND. CODE § 24-4.5-7-104 (Supp. 2002) (“‘Small loan’ means a loan: (a) with a principal loan amount that is more than fifty dollars (\$50) and less than four hundred one dollars (\$401); and (b) in which the lender holds the borrower’s check under an agreement, either express or implied, for a specific period before the lender: (i) offers the check for deposit or presentment; or (ii) seeks authorization to transfer or withdraw funds from the borrower’s account.”).

6. *Id.* § 24-4.5-7-202.

7. See *id.* § 24-4.5-7-411 (Supp. 2002) (“Finance charges made in compliance with this chapter are exempt from IC 24-4.5-3-508 and IC 35-45-7-.”). The latter statutory reference refers to the crime of loansharking. See IND. CODE § 35-45-7-2 (1998) (“A person who, in exchange for the loan of any property, knowingly or intentionally receives or contracts to receive from another person any consideration, at a rate greater than two (2) times the rate specified in IC 24-4.5-3-508(2)(a)(i), commits loansharking, a Class D felony. However, loansharking is a Class C felony if force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan.”).

8. IND. CODE § 24-4.5-7-301(2)-(3) (Supp. 2002).

9. *Id.* § 24-4.5-7-401(2).

10. *Id.* § 24-4.5-7-402(1).

11. *Id.* § 24-4.5-7-404(1)-(2).

clauses, confession of judgment clauses, or waivers of the protections provided by the new payday loan statutes.¹² The legislation also contains general provisions barring payday lenders from “[m]aking a misleading or deceptive statement” or “[e]ngaging in unfair, deceptive, or fraudulent practices.”¹³

B. Debt Collection

Two cases from the United States District Court for the Southern District of Indiana examined the interaction between the federal Fair Debt Collection Practices Act¹⁴ (“FDCPA”) and Indiana law. In the first case, *Frye v. Bowman, Heintz, Boscia & Vician, P.C.*,¹⁵ defendants in an Indiana state court debt collection lawsuit filed a federal class action against opposing counsel. The Fryes claimed that the summons served upon them violated several provisions of the FDCPA. Specifically, they objected to the following language:

- a) “You must either personally or by your attorney file your written answer to the COMPLAINT within twenty (20) days commencing the day after this summons and the complaint were personally served upon you or your agent”¹⁶
- b) “However, if you or your agent first received the SUMMONS and the COMPLAINT by certified mail, you have twenty-three (23) days from the date of receipt to file your written answer with the Clerk.”¹⁷
- c) “If you fail to answer the COMPLAINT of the Plaintiff within the times prescribed herein, judgment will be entered against you for what the Plaintiff has demanded.”¹⁸
- d) “If you have a claim against the Plaintiff arising from the same transaction or occurrence, you may be required to assert such claim in writing together with your written answer.”¹⁹

For the most part, the Fryes’ objections seemed rather trivial; the court described the case as a “test of minute violations of the FDCPA.”²⁰ Specifically, the Fryes took issue with the summons because:

- a) The summons indicated that the Fryes had twenty-three days after “receipt” of the summons and complaint by certified mail to respond, rather than twenty-three days after mailing, which is the deadline under the Indiana Trial Rules.²¹

12. *Id.* § 24-4.5-7-410.

13. *Id.* § 24-4.5-7-410(c), (g).

14. 15 U.S.C. §§ 1692-1692o (2000).

15. 193 F. Supp. 2d 1070 (S.D. Ind. 2002).

16. *Id.* at 1075.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 1089.

21. *Id.* at 1077-78.

b) The summons stated that the Fries were required to file an “answer,” yet the Trial Rules allow defendants to file various pre-answer motions in lieu of an answer.²²

c) The summons warned that default judgment “will be entered” if the Fries did not respond before the deadline, even though default judgment is within the discretion of the trial court.²³

d) The summons contended that the Fries “may be” required to assert any counterclaims “arising from the same transaction or occurrence,” yet in most situations, such counterclaims will be mandatory.²⁴

Initially, the court seemed unimpressed with these contentions. The court suggested that under the Seventh Circuit’s “unsophisticated debtor” standard,²⁵ the word “answer” should be interpreted broadly enough to encompass any permissible response to the complaint, including pre-answer motions, and not just an “answer” in the more narrow sense contemplated by Indiana Trial Rule 7(A).²⁶ Furthermore, the Fries’ strategy of interpreting the summons in its most literal sense possibly backfired when the court pointed out that the Trial Rules explicitly state that an otherwise-mandatory counterclaim need not be contained in an answer when, *inter alia*, the counterclaim has already been asserted in a different action or the court is unable to obtain personal jurisdiction over a third party who must be present for the court to resolve the counterclaim.²⁷

The court did concede that the summons in the state court case was inaccurate to the extent that it misstated the deadline for responding after certified mail service and asserted that default judgment “will” rather than “may” be entered had the Fries failed to respond.²⁸ Even then, the court noted that it was “troubled” because the Fries, in initiating the FDCPA class action, also used a summons inaccurately stating that default judgment “will be taken” in the event of a failure to respond.²⁹

22. *Id.* at 1078. The court also noted that in some cases, the defendant will also have the option of invoking federal diversity jurisdiction and removing the case out of state court. *Id.* at 1078 n.4.

23. *Id.* at 1079 & n.6.

24. *Id.* at 1079.

25. “The ‘unsophisticated debtor’ is uneducated, uninformed, naive, and trusting.” *Id.* at 1077. While the unsophisticated debtor standard “is low, close to the bottom of the sophistication meter,” *id.* (quoting *Avila v. Rubin*, 84 F.3d 222, 226 (7th Cir. 1996)), the standard does contain “an objective element of reasonableness in the standard which protects debt collectors from liability for ‘unrealistic or peculiar interpretations of collection letters,’” *id.* (quoting *Gammon v. GC Servs. Ltd.*, 27 F.3d 1254, 1257 (7th Cir. 1994)).

26. *Id.* at 1078-79.

27. *Id.* at 1079.

28. *Id.* at 1077-79 & n.6.

29. *Id.* at 1079-80. Apparently the court was not too concerned about the language itself; as the court recognized, both its own website and an appendix to the Federal Rules of Civil Procedure provide form summonses containing the same language. *See id.* at 1080. Rather, the court seemed

Nonetheless, the court proceeded to analyze the Fries' claims under the FDCPA. As for the claim that the summons violated the FDCPA's ban on harassing or abusive conduct,³⁰ the court rejected it because the summons would not "harass, oppress or abuse any person" and was "not obscene, profane or offensive in the least"; to the contrary, it was "reasonable and civil."³¹ Likewise, the court declined to find that the summons violated the provision of the FDCPA prohibiting "unfair or unconscionable means" in the debt collection process:³² "It seems strange to suggest that the use of language consistent with that used in forms of summons available from state court clerks' offices is unfair or unconscionable."³³

As for the Fries' claim that the summons violated the FDCPA's prohibition on "any false, deceptive, or misleading representation or means,"³⁴ the Fries argued that the statements at issue were "literally false," and hence, the unsophisticated debtor standard should not apply.³⁵ However, the court found that only the portion of the summons regarding the deadline for replying via certified mail was literally false; the other statements at issue "were not literally false" and merely "may have had the potential to mislead or deceive."³⁶ Because the Fries failed to introduce any evidence that an unsophisticated debtor would be misled by the potentially misleading statements, the court rejected this claim, except with respect to the "literally false" statement concerning the deadline for replying after service by certified mail.³⁷

The Fries also asserted that the summons violated the provision of the FDCPA that deems it

unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.³⁸

However, the court quickly disposed of this claim by noting that the Fries did not furnish any evidence in support of the claim. The court went on to say that it was "at a loss as to how this provision would apply to the Fries' claims. Surely, they are not suggesting that Bowman's use of the Summonses was an effort to create the false belief that the Madison County Superior Court was participating in the

bothered by the Fries' inconsistency, even though it recognized that the form of the summons used by the Fries was "not at issue." *Id.* at 1079.

30. *See* 15 U.S.C. § 1692d (2000).

31. *Frye*, 193 F. Supp. 2d at 1081-83.

32. 15 U.S.C. § 1692f.

33. *Frye*, 193 F. Supp. 2d at 1082 n.10.

34. *Id.* at 1083 (quoting 15 U.S.C. § 1692e).

35. *Id.* at 1083-84. The unsophisticated debtor standard is discussed *supra* note 25.

36. *Frye*, 193 F. Supp. 2d at 1084.

37. *Id.*

38. *Id.* (quoting 15 U.S.C. § 1692j(a)).

collection of the debt.”³⁹

Ultimately, the Fries were left with only one viable FDCPA claim, i.e., that the summons violated the prohibition on false statements by asserting that they had twenty-three days after receipt to respond if service was made via certified mail, when the correct deadline is twenty-three days after mailing. The court then invoked the “bona fide error defense” to reject this claim.⁴⁰ This defense shields a debt collector from FDCPA liability if it “shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.”⁴¹

After noting that the form summonses provided by many Indiana state courts contain the same errors at issue in the *Frye* case, the court found that the defendant law firm presented uncontested evidence that the violation was unintentional and that the law firm had “in place procedures reasonably designed to avoid errors in summonses that could result in FDCPA violations and, moreover, those procedures were followed in the state court lawsuit filed against the Fries.”⁴² Accordingly, the court entered summary judgment in favor of the law firm on all claims.⁴³

The second case, *Wehrheim v. James M. Secrest, P.C.*,⁴⁴ considered the question of whether a claim of criminal deception as defined in Indiana Code section 35-43-5-3(a)⁴⁵ is preempted when a debtor alleges that a collector violated the FDCPA by trying to collect a debt already discharged in bankruptcy.⁴⁶ The court’s answer was “yes.” After deciding that any FDCPA claim was preempted by the Bankruptcy Code,⁴⁷ the court went further and determined that the state law deception claim was also preempted, and that the debtor’s only recourse was to initiate a contempt proceeding in bankruptcy court under the Bankruptcy Code.⁴⁸

39. *Id.*

40. *See id.* at 1089.

41. 15 U.S.C. § 1692k(c).

42. *Frye*, 193 F. Supp. 2d at 1088. Those procedures included: a) The creation and use of a manual on FDCPA compliance; b) educational seminars on the FDCPA; c) the use of language from court-provided summons forms; and d) before the firm commenced suit, an attorney would review the entire file and, inter alia, ensure that the summons was in line with the form summons provided by the court where the case was to be filed. *Id.* at 1076.

43. *Id.* at 1089.

44. No. IP 00-1328-C T/K, 2002 WL 31242783 (S.D. Ind. Aug. 16, 2002).

45. IND. CODE § 35-43-5-3(a)(2) (1998) (“A person who . . . knowingly or intentionally makes a false or misleading written statement with intent to obtain property . . . commits deception, a Class A misdemeanor.”).

46. *Wehrheim*, 2002 WL 31242783 at *10.

47. *Id.* at *9. The *Wehrheim* court noted that “courts are divided on this issue.” *Id.* at *6.

48. *Id.* at *10. Under the Bankruptcy Code, a discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset [the] debt as a personal liability of the debtor.” 11 U.S.C. § 524(a)(2) (2000).

II. DECEPTIVE AND UNCONSCIONABLE PRACTICES

A. Sales of Recalled Products

The Indiana General Assembly expanded the definition of “deceptive act” in the context of Indiana’s consumer protection statutes to include the sale of a recalled product that has not been appropriately fixed or modified.⁴⁹ This new statutory provision applies regardless of whether the product was recalled voluntarily or involuntarily.⁵⁰ However, “it is an affirmative defense . . . that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.”⁵¹

B. Computer Software

In *Berghausen v. Microsoft Corp.*,⁵² the Indiana Court of Appeals affirmed the dismissal of an antitrust class action against Microsoft that also included consumer protection claims. After purchasing a copy of the Windows 98 operating system, Berghausen alleged, inter alia, that “Microsoft monopolized the market for computer operating systems and as a result he paid a monopoly price.”⁵³ Berghausen claimed that Microsoft violated Indiana consumer protection law by “implicitly represent[ing] to consumers that its prices were fair and competitive when in fact the prices were supra-competitive, monopolist prices that far exceeded the prices consumers would have paid if Microsoft had not engaged in the aforesaid conduct.”⁵⁴

Specifically, Berghausen first alleged that Microsoft violated the statutory prohibition against representing, in writing or orally, 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.”⁵⁵ However, the court quickly rejected this notion because Berghausen did not show that Microsoft made any written or oral representation, and he failed to explain how “implicit representations” were within the scope of the statute.⁵⁶

Berghausen also claimed that Microsoft violated the following statute:

A supplier commits an unconscionable act that shall be treated the same as a deceptive act under this chapter *if the supplier solicits a person to*

49. See Act of Mar. 20, 2002, Pub. L. 70-2002, 2002 Ind. Acts 933 (codified at IND. CODE § 24-5-0.5-3 (Supp. 2002)).

50. IND. CODE § 24-5-0.5-3(a)(18) (Supp. 2002).

51. *Id.* § 24-5-0.5-3(g).

52. 765 N.E.2d 592 (Ind. Ct. App. 2002), *trans. denied sub nom.* *Branham v. Microsoft Corp.*, 783 N.E.2d 692 (Ind. 2002).

53. *Id.* at 593-94.

54. *Id.* at 598 (quoting Appellant’s Appendix at 18).

55. *Id.* (quoting IND. CODE § 24-5-0.5-3(a)(6)).

56. *Id.*

enter into a contract or agreement: (1) that contains terms that are oppressively one sided or harsh; (2) in which the terms unduly limit the person's remedies; or (3) in which the price is unduly excessive; and there was unequal bargaining power that led the person to enter into the contract or agreement unwillingly or without knowledge of the terms of the contract or agreement.⁵⁷

After noting that Berghausen waived this claim by failing to provide a supporting argument, the court went on to indicate that his complaint did not allege that Microsoft made any solicitation to contract.⁵⁸ Accordingly, the court of appeals upheld the trial court's dismissal.

III. FUEL PRICE GOUGING

In what many state attorneys general saw as blatant price gouging, some retailers drastically increased their gasoline prices during the panic that occurred after the terrorist attacks of September 11, 2001.⁵⁹ The Indiana General Assembly responded by enacting legislation specifically aimed at fuel price gouging.⁶⁰ "Price gouging," for purposes of the new statutes, is defined as "charging a consumer an unconscionable amount for the sale of fuel"⁶¹ when a state of emergency has been declared by the governor, or within twenty-four hours before the declaration.⁶² The legislation further provides,

Price gouging occurs if: (1) the amount charged grossly exceeds the average price at which fuel was readily obtainable within the retailer's trade area during the seven (7) days immediately before the declaration of emergency; and (2) the increase in the amount charged is not attributable to cost factors to the retailer, including replacement costs,

57. *Id.* at 598-99 (quoting IND. CODE § 24-5-0.5-10(b) (1998)) (emphasis by court).

58. *Id.* at 599.

59. See Nat'l Ass'n of Att'ys Gen., *NAAG Projects: Consumer Protection*, at <http://www.naag.org/issues/issue-consumer.php> (2001) (noting that some sellers "raised gas prices by 300%").

60. See Act of Mar. 26, 2002, Pub. L. 124-2002, 2002 Ind. Acts 1885 (codified at IND. CODE §§ 4-6-9.1-1 to -7 (Supp. 2002)).

61. IND. CODE § 4-6-9.1-2.

62. *Id.* § 4-6-9.1-1(a) (dictating that the price gouging statutes "apply to the period during which an emergency is declared and the twenty-four (24) hours before the declaration by the governor under IC 10-4-1-7 or IC 10-4-1-7.1"). The latter of the cited statutes allows the governor to declare an "energy emergency." IND. CODE § 10-4-1-7.1(a)(1) (1998) ("The governor may, upon finding that an energy emergency exists, proclaim a state of energy emergency at which time all of the general and specific emergency powers further enumerated in this section and section 7.2 of this chapter become effective."). An energy emergency is defined as "an existing or projected shortfall of at least eight percent (8%) of motor fuel or of other energy sources which threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized." *Id.* § 10-4-1-3.

taxes, and transportation costs incurred by the retailer.⁶³

The fuel price gouging legislation empowers the attorney general to take three kinds of action against offenders. First, the attorney general may seek an injunction.⁶⁴ Second, the attorney general may “seek restitution for victims of price gouging.”⁶⁵ Third, the attorney general may initiate a civil action against a price-gouging retailer to impose a penalty of up to \$1000.00 “per transaction.”⁶⁶

IV. LANDLORD-TENANT RELATIONS

In the last few decades, Indiana courts have indicated a willingness to find “an implied warranty of habitability in the context of residential leases.”⁶⁷ However, as recently as January 2002, the Indiana Court of Appeals stated that “an implied warranty of habitability is not imposed by law on every residential lease contract.”⁶⁸

Such is no longer the case. Since then, the Indiana General Assembly has enacted legislation that effectively implies a warranty of habitability on leases made after June 30, 2002.⁶⁹ Under this legislation, a landlord is obligated to:

- (1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.
- (2) Comply with all health and housing codes applicable to the rental premises.
- (3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.
- (4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:
 - (A) Electrical systems.
 - (B) Plumbing systems sufficient to accommodate a reasonable

63. IND. CODE § 4-6-9.1-2 (Supp. 2002).

64. *Id.* § 4-6-9.1-3.

65. *Id.*

66. *Id.* §§ 4-6-9.1-3, -5.

67. *Schuman v. Kobets*, 760 N.E.2d 682, 684-85 (Ind. Ct. App. 2002), *trans. denied*, 774 N.E.2d 515 (Ind. 2002).

68. *Id.* at 685.

69. *See* Act of Mar. 21, 2002, Pub. L. 92-2002, 2002 Ind. Acts 1540 (codified at IND. CODE §§ 32-31-7-1 to -7, 32-31-8-1 to -6 (Supp. 2002)); *see also* WILLIAM B. STOEBCUK & DALE A. WHITMAN, *THE LAW OF PROPERTY* § 6.38, at 299 (3d ed. 2000) (recognizing the parallel between statutes imposing habitability requirements and judicially-imposed implied warranties of habitability).

supply of hot and cold running water at all times.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.

(E) Elevators, if provided.

(F) Appliances supplied as an inducement to the rental agreement.⁷⁰

If the tenant notifies the landlord of a violation and the landlord does not bring the premises into compliance, the tenant may bring an action to obtain actual and consequential damages, an injunction, attorney fees, costs, and “[a]ny other remedy appropriate under the circumstances.”⁷¹

However, in exchange for these statutory rights, tenants must live up to certain responsibilities. Tenants must:

(1) Comply with all obligations imposed primarily on a tenant by applicable provisions of health and housing codes.

(2) Keep the areas of the rental premises occupied or used by the tenant reasonably clean.

(3) Use the following in a reasonable manner:

(A) Electrical systems.

(B) Plumbing.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems.

(E) Elevators, if provided.

(F) Facilities and appliances of the rental premises.

(4) Refrain from defacing, damaging, destroying, impairing, or removing any part of the rental premises.

(5) Comply with all reasonable rules and regulations in existence at the time a rental agreement is entered into. A tenant shall also comply with amended rules and regulations as provided in the rental agreement.⁷²

Furthermore, when the tenancy ends, “the tenant shall deliver the rental premises to the landlord in a clean and proper condition, excepting ordinary wear and tear expected in the normal course of habitation of a dwelling unit.”⁷³

Like tenants, landlords are authorized to bring an action to enforce the

70. IND. CODE § 32-31-8-5. “A waiver . . . by a landlord or tenant, by contract or otherwise, is void.” *Id.* § 32-31-8-4.

71. *Id.* § 32-31-8-6(d)(3).

72. *Id.* § 32-31-7-5.

73. *Id.* § 32-31-7-6.

statutory obligations and may recover attorney fees if they prevail.⁷⁴ However, the landlord generally must first notify the tenant of the violation and give the tenant “a reasonable amount of time to remedy the noncompliance” before filing a lawsuit.⁷⁵

CONCLUSION

Developments in Indiana consumer law during the Survey period were relatively few in number. Indeed, the most significant recent development may have been the new landlord-tenant statutes—something that one might consider outside the scope of “consumer law.”⁷⁶ Nonetheless, the legislation enacted during the Survey period suggests that the General Assembly is working to remedy Indiana’s reputation as a consumer-unfriendly state.⁷⁷

74. *Id.* § 32-31-7-7.

75. *Id.*

76. For example, the West Group’s Key Number System seems to view consumer law as consisting of “consumer credit” and “consumer protection” matters. WEST’S ANALYSIS OF AMERICAN LAW 290, 292 (2002 ed.). Other matters of relevance to consumers are classified under areas of the law such as “contracts,” “credit reporting agencies,” “products liability,” and “sales.” *Id.* at 291-92.

77. See James P. Nehf, *Consumer Transactions: Movement Toward a More Progressive Approach*, 34 IND. L. REV. 599, 599 (2001) (commenting that “Indiana continues to be a state in which consumer rights are not aggressively protected by statute or court decisions when compared with the progressive consumer movements in other states”).