February 20, 1998

ENGROSSED
HOUSE BILL No. 1120

DIGEST OF HB 1120 (Updated February 19, 1998 9:48 am - DI 76)

Citations Affected: IC 23-7.

Synopsis: Solicitations and telecommunications switching. Requires professional fundraisers to submit information concerning a solicitation campaign to the consumer protection division of the office of the attorney general, including the amount of money the campaign raised, the amount of money the professional fundraiser received, and the amount received by charitable organizations. Makes an exception for a solicitation campaign on behalf of law enforcement, a rescue squad, or a fire department in which certain written authorization for the campaign has been filed with the division. Raises a professional fundraiser's initial registration fee to $1,000. Specifies that fiscal records that a professional fundraiser is required to keep are to be made available to the consumer protection division of the office of the attorney general upon request. Requires a professional solicitor to disclose certain information to the donor at the time of the solicitation,
(Continued next page)

Effective: July 1, 1998.

Grubb, Keeler, Leuck, Bottorff
(SENATE SPONSORS — LONG, BLADE)

January 6, 1998, read first time and referred to Committee on Commerce and Economic Development.
January 27, 1998, amended, reported — Do Pass.
February 2, 1998, read second time, amended, ordered engrossed.
February 3, 1998, engrossed. Read third time, passed. Yeas 99, nays 0.
SENATE ACTION
February 9, 1998, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.
February 19, 1998, amended, reported favorably — Do Pass.

C o p y

including the name of the professional solicitor, the charitable purpose for which the funds are being raised, that the purpose of the telephone call is to sell goods or services, and the nature of the goods or services. Prohibits collection of contributions in person or by courier unless the solicitation was made in connection with the sale of goods or items or in person and the attempt to collect is made at the time of solicitation. Provides that a person who solicits a charitable contribution for law enforcement, a rescue squad, or a fire department must include in its solicitation notice, which is required to be filed with the consumer protection division of the attorney general, a written authorization from the law enforcement agency, rescue squad, or fire department on whose behalf the person seeks to solicit contributions. Raises penalties for violation of the professional fundraiser law to a Class B misdemeanor on the first offense and to a Class A misdemeanor for successive offenses. Requires a telemarketer who initiates a telephone conversation for the purpose of making a solicitation, if the prospect requests the information, to disclose the identity of the seller, that the purpose of the call is to sell goods or services, and the nature of the goods or services. Requires the telemarketer to comply with a federal law regarding the maintenance of a no call list.

C o p y

February 20, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

C o p y

ENGROSSED HOUSE BILL No. 1120

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit.

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

SECTION 1. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) A person may not act as a professional fundraiser consultant or professional solicitor for a charitable organization unless the person has first registered with the division. A person who applies for registration shall disclose the following information while under oath:

(1) The names and addresses of all officers, employees, and agents who are actively involved in fundraising or related activities.

(2) The names and addresses of all persons who own a ten percent (10%) or more interest in the registrant.

(3) A description of any other business related to fundraising conducted by the registrant or any person who owns ten percent (10%) or more interest.

(4) The name or names under which it intends to solicit

contributions.

(5) Whether the organization has ever had its registration denied, suspended, revoked, or enjoined by any court or other governmental authority.

(b) A registrant shall notify the division in writing within one hundred eighty (180) days of any change in the information contained in the registration. However, if requested by the division, the solicitor has fifteen (15) days to notify the division of any change in the information.

(c) Each registration is valid for one (1) year and may be renewed for additional one (1) year periods upon application to the division and payment of the renewal fee.

(d) Before acting as a professional fundraiser consultant for a particular charitable organization, the consultant must enter into a written contract with the organization and file this contract with the division. The contract must identify the services that the professional fundraiser consultant is to provide, including whether the professional fundraiser consultant will at any time have custody of contributions.

(e) Before a professional solicitor engages in a solicitation, the professional solicitor must have a contract which is filed with the division. This contract must specify the percentage of gross contributions which the charitable organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable organization will receive. The amount that the charitable organization will receive must be expressed as a fixed percentage of the gross revenue or as a reasonable estimate of the gross revenue. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as expenses of the solicitation campaign, including the cost of the merchandise or services sold. If requested by the charitable organization, the person who solicits must at the conclusion of a charitable appeal provide to the charitable organization the names and addresses of all contributors, the amount of each contribution, and a final accounting of all expenditures. Such information may not be used in violation of any trade secret laws. **The contract must disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from the professional solicitor for the three (3) years preceding the year in which the contract is formed.**

(f) Before beginning a solicitation campaign, a professional solicitor must file a solicitation notice with the division. The notice must include

Copy

the following:

(1) A copy of the contract described in subsection (e).

(2) The projected dates when soliciting will begin and end.

(3) The location and telephone number from where solicitation will be conducted.

(4) The name and residence address of each person responsible for directing and supervising the conduct of the campaign. However, the division shall not divulge the residence address unless ordered to do so by a court of competent jurisdiction, or in furtherance of the prosecution of a violation under this chapter.

(5) If the solicitation is one described under section 7(a)(2) of this chapter, the solicitation notice must include a copy of the required written authorization.

(g) After a solicitation campaign, other than a campaign for which a written authorization has been filed under subsection (f)(5), has ended, a professional fundraiser consultant or a professional solicitor shall submit the following information concerning the campaign to the division:

(1) The total amount of money collected by the professional solicitor.

(2) The total amount of money paid to the professional solicitor.

(3) The total amount of money that the charitable organization paid as expenses as part of the solicitation campaign.

(4) The total amount of money received by the charitable organization.

~~(g)~~ **(h)** The charitable organization on whose behalf the professional solicitor is acting must certify that the ~~notice~~ **information** filed under ~~subsection~~ **subsections** (f) **and (g)** is true and complete to the best of its knowledge.

SECTION 2. IC 23-7-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) A professional fundraiser consultant or professional solicitor who applies for registration shall pay a fee of ~~fifty~~ **one thousand** dollars ~~($50).~~ **($1,000).** A partnership, limited liability company, corporation, or other entity that intends to act as a professional fundraiser consultant, or professional solicitor, may register for and pay a single registration fee of ~~fifty~~ **one thousand** dollars ~~($50)~~ **($1,000)** on behalf of its members, officers, agents, and employees.

(b) The fees collected shall be used, in addition to funds appropriated by the general assembly, for the administration of this

Copy

chapter.

(c) Before July 2 of each year, a professional fundraiser consultant or professional solicitor registered under this chapter must file an update to the registration. A renewal fee of fifty dollars ($50) must accompany this update.

SECTION 3. IC 23-7-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. **(a)** Every professional fundraiser consultant and professional solicitor required to register under this chapter shall keep accurate fiscal records regarding its activities in Indiana. A professional fundraiser consultant or professional solicitor shall retain the records for at least three (3) years after the end of the period of registration to which they relate.

(b) Records maintained under subsection (a) shall be made available for inspection and copying by the division upon oral or written request of the division at any time during the normal business hours of the professional fundraiser consultant or professional solicitor.

SECTION 4. IC 23-7-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) A professional solicitor subject to registration under this chapter or a person who is employed to solicit or act on behalf of a professional solicitor subject to registration under this chapter shall disclose at the time of the solicitation and before the donor agrees to make a contribution:

(1) the **name and address of the** charitable organization that is being represented; ~~and~~

(2) the fact that the person soliciting the contribution is, or is employed by, a professional solicitor, and the fact that the professional solicitor is compensated;

(3) the full name, mailing address, and telephone number of the professional solicitor;

(4) the charitable purpose for which the funds are being raised;

(5) that the purpose of the call is to sell goods or services; and

(6) the nature of the goods or services.

(b) If a person solicits in writing or in person, the disclosures required by subsection (a)(1) and (a)(2) shall be in writing. If a person solicits by telephone, the disclosures required by subsection (a)(1) and (a)(2) shall be made orally.

(c) A written confirmation shall be mailed within ten (10) days after each solicitation in which a contribution has been given. This confirmation must include the disclosures required under subsection (a)(1) and (a)(2).

C o p y

(d) All disclosures required by this section must be clear and conspicuous.

SECTION 5. IC 23-7-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) A person who solicits charitable contributions may not:

(1) use the fact of registration as an endorsement by the state;

(2) use the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter" unless a bona fide police, law enforcement, rescue squad, or fire department authorizes its use in writing;

(3) misrepresent to anyone that the contribution will be used for a charitable purpose if the person has reason to believe the contribution will not be used for a charitable purpose;

(4) misrepresent to anyone that another person endorses the solicitation unless that person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation; ~~or~~

(5) misrepresent to anyone that the contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation; **or**

(6) collect or attempt to collect a contribution in person or by means of a courier unless:

(A) the solicitation is made in person and the collection or attempt to collect is made at the time of the solicitation; or

(B) the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.

(b) A person who solicits charitable contributions shall not represent that tickets to events will be donated for use by another, unless the following requirements have been met:

(1) The paid solicitor has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(2) No more contributions for donated tickets are solicited than the number of ticket commitments received from charitable organizations.

SECTION 6. IC 23-7-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) The division may receive, investigate, and prosecute complaints concerning the activities of professional fundraiser consultants and professional solicitors who:

C o p y

(1) may be subject to this chapter; or

(2) have or may have violated this chapter.

All complaints must be in writing, signed by the complainant, and filed with the division.

(b) The attorney general may subpoena witnesses, send for and compel the production of books, records, papers, and documents of professional fundraiser consultants and professional solicitors who are subject to registration under this chapter, for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the attorney general.

(c) The attorney general may bring an action to enjoin a violation of this chapter. In this action, the court may order a person who has violated this chapter to pay the reasonable costs of investigation and prosecution incurred by the attorney general, may award the state civil penalties up to five hundred dollars ($500) for each violation, and may order the professional fundraiser consultant or professional solicitor to repay money unlawfully received from aggrieved solicitees. In ordering injunctive relief, the division is not required to establish irreparable harm but only a violation of a statute or that the requested order promotes the public interest. It is an affirmative defense to the assessment of civil penalties under this subsection that the defendant acted pursuant to a good faith misunderstanding concerning the requirements of this chapter.

(d) A person who knowingly or intentionally:

(1) fails to file a registration statement or other information;

(2) files a statement or other information which is materially false; or

(3) fails to make a disclosure;

as required by this chapter commits a Class ~~A infraction.~~ **B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.**

~~(e) Notwithstanding IC 34-4-32-1, the attorney general has concurrent jurisdiction with a prosecuting attorney to enforce this chapter.~~

~~(f)~~ **(e)** A local unit of government may adopt an ordinance which regulates professional fundraisers and solicitors if the ordinance does not conflict with this chapter.

~~(g)~~ **(f)** A professional fundraiser consultant, or a professional solicitor, who has the person's principal place of business outside of Indiana, or who has organized under the laws of another state, and who

C o p y

solicits contributions from persons in Indiana, is subject to this chapter and shall be considered to have appointed the secretary of state as his agent. All service of process under this subsection shall be made on the secretary of state under Rule 4.10 of the Indiana Rules of Trial Procedure.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1120, 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 1, delete lines 1 through 15.

Page 2, delete lines 1 through 27.

Page 3, line 35, after "laws." insert "**The contract must disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from the professional solicitor for the three (3) years preceding the year in which the contract is formed.**".

Page 4, line 9, delete "the professional".

Page 4, line 10, delete "fundraiser consultant or".

Page 4, line 11, delete "the professional".

Page 4, line 12, delete "fundraiser consultant or".

Page 4, line 14, delete ":".

Page 4, line 15, delete "(A)".

Page 4, line 15, delete "; and" and insert "**.**".

Page 4, run in lines 14 and 15.

Page 4, delete lines 16 through 17, begin a new line block indented and insert:

"**(4) The total amount of money received by the charitable organization.**".

Page 5, line 4, after "division" insert "**and members of the public**".

Page 5, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 5. IC 23-7-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) A professional solicitor subject to registration under this chapter or a person who is employed to solicit or act on behalf of a professional solicitor subject to registration under this chapter shall disclose at the time of the solicitation and before the donor agrees to make a contribution:

(1) the **name and address of the** charitable organization that is being represented; ~~and~~

(2) the fact that the person soliciting the contribution is, or is employed by, a professional solicitor, and the fact that the professional solicitor is compensated;

(3) the full name, mailing address, and telephone number of the professional solicitor; and

(4) the charitable purpose for which the funds are being raised.

(b) If a person solicits in writing or in person, the disclosures

Copy

required by subsection (a)(1) and (a)(2) shall be in writing. If a person solicits by telephone, the disclosures required by subsection (a)(1) and (a)(2) shall be made orally.

(c) A written confirmation shall be mailed within ten (10) days after each solicitation in which a contribution has been given. This confirmation must include the disclosures required under subsection (a)(1) and (a)(2).

(d) All disclosures required by this section must be clear and conspicuous.".

Page 5, line 28, delete ";".

Page 5, line 29, delete "(B)".

Page 5, line 30, delete "." and insert "**; or**".

Page 5, run in lines 28 through 30.

Page 5, between lines 30 and 31, begin a new line double block indented and insert:

> "**(B) the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.**".

Page 5, between lines 40 and 41, begin a new paragraph and insert:

"SECTION 1. IC 23-7-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) The division may receive, investigate, and prosecute complaints concerning the activities of professional fundraiser consultants and professional solicitors who:

(1) may be subject to this chapter; or

(2) have or may have violated this chapter.

All complaints must be in writing, signed by the complainant, and filed with the division.

(b) The attorney general may subpoena witnesses, send for and compel the production of books, records, papers, and documents of professional fundraiser consultants and professional solicitors who are subject to registration under this chapter, for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the attorney general.

(c) The attorney general may bring an action to enjoin a violation of this chapter. In this action, the court may order a person who has violated this chapter to pay the reasonable costs of investigation and prosecution incurred by the attorney general, may award the state civil penalties up to five hundred dollars ($500) for each violation, and may order the professional fundraiser consultant or professional solicitor to repay money unlawfully received from aggrieved solicitees. In ordering

C o p y

injunctive relief, the division is not required to establish irreparable harm but only a violation of a statute or that the requested order promotes the public interest. It is an affirmative defense to the assessment of civil penalties under this subsection that the defendant acted pursuant to a good faith misunderstanding concerning the requirements of this chapter.

(d) A person who knowingly or intentionally:

(1) fails to file a registration statement or other information;

(2) files a statement or other information which is materially false; or

(3) fails to make a disclosure;

as required by this chapter commits a Class ~~A infraction.~~ **B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.**

(e) Notwithstanding IC 34-4-32-1, the attorney general has concurrent jurisdiction with a prosecuting attorney to enforce this chapter.

(f) A local unit of government may adopt an ordinance which regulates professional fundraisers and solicitors if the ordinance does not conflict with this chapter.

(g) A professional fundraiser consultant, or a professional solicitor, who has the person's principal place of business outside of Indiana, or who has organized under the laws of another state, and who solicits contributions from persons in Indiana, is subject to this chapter and shall be considered to have appointed the secretary of state as his agent. All service of process under this subsection shall be made on the secretary of state under Rule 4.10 of the Indiana Rules of Trial Procedure.".

Page 7, between lines 17 and 18, begin a new paragraph and insert:

"**(c) A seller may not knowingly or intentionally block or attempt to block the display of the seller's:**

(1) telephone number; or

(2) identity;

by a caller ID service (as defined by IC 8-1-2.9-1) when attempting to initiate a telephone conversation for the purpose of making a solicitation to a prospect.

(d) If a seller uses an automated dialing and answering device when attempting to initiate a telephone conversation for the purpose of making a solicitation to a prospect, the seller must use a prerecorded message or other means to ensure that the telephone is not silent after the prospect answers the telephone.".

C o p y

Page 7, line 18, delete "(c)" and insert "**(e)**".

Page 7, line 18, delete "subsection" and insert "**this section**".

Page 7, line 19, delete "(b)".

Page 7, line 19, delete "C misdemeanor." and insert "**B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1120 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 14, nays 0.

C o p y

HOUSE MOTION

Mr. Speaker: I move that House Bill 1120 be amended to read as follows:

Page 4, line 25, delete "and".

Page 4, line 27, delete "." and insert "**;**".

Page 4, line between lines 27 and 28, begin a new line block indented and insert:

"**(5) that the purpose of the call is to sell goods or services; and**

(6) the nature of the goods or services.".

Page 8, line 9, delete "begin the" and insert "**disclose in a clear and conspicuous manner the following information at the request of the customer:**

(1) the identity of the seller, including the address and telephone number;

(2) that the purpose of the call is to sell goods or services; and

(3) the nature of the goods or services.".

Page 8, delete lines 10 through 17.

Page 8, between lines 17 and 18, begin a new paragraph and insert:

"**(c) A seller is required to maintain a no call list in compliance with 16 CFR 310.**".

Page 8, line 18, delete "(c)" and insert "**(d)**".

Page 8, line 25, delete "(d)" and insert "**(e)**".

Page 8, line 30, delete "(e)" and insert "**(f)**".

(Reference is to House Bill 1120 as printed January 28, 1998.)

GRUBB

C o p y

COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred House Bill 1120, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 10 and 11, begin a new line block indented and insert:

"**(5) If the solicitation is one described under section 7(a)(2) of this chapter, the solicitation notice must include a copy of the required written authorization.**".

Page 3, line 11, after "campaign" insert "**, other than a campaign for which a written authorization has been filed under subsection (f)(5),**".

Page 4, line 9, delete "**and members**".

Page 4, line 10, delete "**of the public**".

Page 6, strike lines 29 through 31.

Page 6, line 32, strike "(f)" and insert "**(e)**".

Page 6, line 35, strike "(g)" and insert "**(f)**".

Delete pages 7 through 8.

and when so amended that said bill do pass.

(Reference is to House Bill 1120 as reprinted February 3, 1998.)

MEEKS, Chairperson

Committee Vote: Yeas 7, Nays 1.

Copy