

January 28, 1998

HOUSE BILL No. 1120

DIGEST OF HB 1120 (Updated January 26, 1998 9:14 pm - DI 93)

Citations Affected: IC 23-7; IC 24-5.

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. 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 and to members of the public upon request. 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. Specifies the conditions under which a contributor to a professional
(Continued next page)

Effective: July 1, 1998.

Grubb, Keeler, Leuck, Bottorff

January 6, 1998, read first time and referred to Committee on Commerce and Economic Development.
January 27, 1998, amended, reported — Do Pass.

HB 1120—LS 6852/DI 93



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fundraiser's campaign may cancel the contributor's contribution agreement. 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 to begin the solicitation by informing the prospect that the telemarketer intends to make a solicitation, by informing the prospect of the first and last name of the salesperson and the name, telephone number, and mailing address of the telemarketer, and by informing the prospect that the telemarketer is required by law to maintain a no call list and to add the prospect to the list if the prospect requests to be added. Prohibits the knowing or intentional blocking of caller ID by a telemarketer. Requires a telemarketer that uses an automatic dialing and answering machine to take certain steps to prevent silence after a person answers the telephone. Makes it a Class B misdemeanor for the telemarketer to knowingly or intentionally fail to provide the required information on the first offense and makes it a Class A misdemeanor for successive offenses.

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January 28, 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.

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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:

- 1 SECTION 1. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) A person may not act as a
3 professional fundraiser consultant or professional solicitor for a
4 charitable organization unless the person has first registered with the
5 division. A person who applies for registration shall disclose the
6 following information while under oath:
7 (1) The names and addresses of all officers, employees, and
8 agents who are actively involved in fundraising or related
9 activities.
10 (2) The names and addresses of all persons who own a ten percent
11 (10%) or more interest in the registrant.
12 (3) A description of any other business related to fundraising
13 conducted by the registrant or any person who owns ten percent
14 (10%) or more interest.
15 (4) The name or names under which it intends to solicit

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- 1 contributions.
- 2 (5) Whether the organization has ever had its registration denied,
3 suspended, revoked, or enjoined by any court or other
4 governmental authority.
- 5 (b) A registrant shall notify the division in writing within one
6 hundred eighty (180) days of any change in the information contained
7 in the registration. However, if requested by the division, the solicitor
8 has fifteen (15) days to notify the division of any change in the
9 information.
- 10 (c) Each registration is valid for one (1) year and may be renewed
11 for additional one (1) year periods upon application to the division and
12 payment of the renewal fee.
- 13 (d) Before acting as a professional fundraiser consultant for a
14 particular charitable organization, the consultant must enter into a
15 written contract with the organization and file this contract with the
16 division. The contract must identify the services that the professional
17 fundraiser consultant is to provide, including whether the professional
18 fundraiser consultant will at any time have custody of contributions.
- 19 (e) Before a professional solicitor engages in a solicitation, the
20 professional solicitor must have a contract which is filed with the
21 division. This contract must specify the percentage of gross
22 contributions which the charitable organization will receive or the
23 terms upon which a determination can be made as to the amount of the
24 gross revenue from the solicitation campaign that the charitable
25 organization will receive. The amount that the charitable organization
26 will receive must be expressed as a fixed percentage of the gross
27 revenue or as a reasonable estimate of the gross revenue. If a fixed
28 percentage is used, the percentage must exclude any amount that the
29 charitable organization is to pay as expenses of the solicitation
30 campaign, including the cost of the merchandise or services sold. If
31 requested by the charitable organization, the person who solicits must
32 at the conclusion of a charitable appeal provide to the charitable
33 organization the names and addresses of all contributors, the amount
34 of each contribution, and a final accounting of all expenditures. Such
35 information may not be used in violation of any trade secret laws. **The**
36 **contract must disclose the average percentage of gross**
37 **contributions collected on behalf of charitable organizations that**
38 **the charitable organizations received from the professional**
39 **solicitor for the three (3) years preceding the year in which the**
40 **contract is formed.**
- 41 (f) Before beginning a solicitation campaign, a professional solicitor
42 must file a solicitation notice with the division. The notice must include

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1 the following:

- 2 (1) A copy of the contract described in subsection (e).
 3 (2) The projected dates when soliciting will begin and end.
 4 (3) The location and telephone number from where solicitation
 5 will be conducted.
 6 (4) The name and residence address of each person responsible
 7 for directing and supervising the conduct of the campaign.
 8 However, the division shall not divulge the residence address
 9 unless ordered to do so by a court of competent jurisdiction, or in
 10 furtherance of the prosecution of a violation under this chapter.

11 **(g) After a solicitation campaign has ended, a professional**
 12 **fundraiser consultant or a professional solicitor shall submit the**
 13 **following information concerning the campaign to the division:**

- 14 **(1) The total amount of money collected by the professional**
 15 **solicitor.**
 16 **(2) The total amount of money paid to the professional**
 17 **solicitor.**
 18 **(3) The total amount of money that the charitable**
 19 **organization paid as expenses as part of the solicitation**
 20 **campaign.**
 21 **(4) The total amount of money received by the charitable**
 22 **organization.**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

42 (2) use the name "police", "law enforcement", "trooper", "rescue

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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:

(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

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1 subject to registration under this chapter, for the furtherance of any
 2 investigation under this chapter. The circuit or superior court located
 3 in the county where the subpoena is to be issued shall enforce any such
 4 subpoena by the attorney general.

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

18 (d) A person who knowingly or intentionally:

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

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

21 or

22 (3) fails to make a disclosure;

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

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

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

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

41 SECTION 7. IC 23-7-8-10 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 1998]: **Sec. 10. (a) A contributor has the right to cancel an agreement or a pledge to contribute as follows:**

3 **(1) For a solicitation in which the professional solicitor knowingly fails to comply with this chapter, at any time.**

4 **(2) For a monetary contribution, until midnight of the third business day after the day on which the contributor receives a written confirmation of contribution under section 6 of this chapter.**

5 **(3) For a nonmonetary contribution, until midnight of the first business day after the day on which the contributor receives a written confirmation of contribution under section 6 of this chapter.**

6 **(b) Cancellation occurs when the contributor gives written or oral notice of the cancellation to the professional solicitor at the address or telephone number stated in the written confirmation of contribution.**

7 **(c) Notice of cancellation, if given by mail, is given at the time the notice is properly addressed and deposited in a mailbox with proper postage.**

8 **(d) A particular form is not required for a notice of cancellation, and notice of cancellation is sufficient if the notice indicates the intention of the contributor to cancel the pledge to contribute.**

9 **(e) Not more than ten (10) days after a notification of cancellation has been received by the professional solicitor, the professional solicitor shall tender to the contributor any contribution made and any note or other evidence of indebtedness.**

10 **(f) Allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after an agreement or a pledge to contribute has been canceled, the contributor upon demand must tender to the professional solicitor any goods or items delivered by the paid solicitor in connection with the contribution but is not obligated to tender the goods or items at any place other than where the goods or items were delivered. If the professional solicitor fails to demand possession of the goods or items within a reasonable time after cancellation, the goods or items become the property of the contributor without obligation to contribute. For purposes of this subsection, forty (40) days is presumed to be a reasonable time.**

11 **(g) Rights created under this section are in addition to other legal rights of a contributor with respect to the binding nature of an agreement or a pledge to make a charitable contribution.**

12 SECTION 8. IC 24-5-12-25 IS ADDED TO THE INDIANA CODE



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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 1998]: Sec. 25. (a) Notwithstanding section 8 of this chapter, as
3 used in this section, "seller" means a person who, personally,
4 through salespersons, or through the use of an automated dialing
5 and answering device, makes a solicitation to a prospect that is
6 outside of the course of dealing, as described in IC 26-1-1-205,
7 between the seller and the prospect.

8 (b) If a seller initiates a telephone conversation for the purpose
9 of making a solicitation to a prospect, the seller must begin the
10 solicitation by informing the prospect:

- 11 (1) that the seller intends to make a solicitation;
- 12 (2) of the first and last name of the salesperson;
- 13 (3) of the name, telephone number, and mailing address of the
14 seller; and
- 15 (4) that the seller is required by law to maintain a no call list
16 and to add the prospect to the list if the prospect requests to
17 be added.

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

- 20 (1) telephone number; or
- 21 (2) identity;

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

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

30 (e) A seller who knowingly or intentionally violates this section
31 commits a Class B misdemeanor. However, the offense is a Class
32 A misdemeanor if the person has a previous unrelated conviction
33 under this subsection.

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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

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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

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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~~ **Class 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."



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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.

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