

HOUSE BILL No. 1120

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2.6-9; IC 23-7-8; IC 24-5-12-25.

Synopsis: Solicitations and telecommunications switching. Prohibits a telecommunications provider from switching or requesting a switch to the telecommunications provider's services without the customer's written consent. Lists remedies that the Indiana utility regulatory commission must impose in the event of an unauthorized switch. 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 and the amount of money the professional fundraiser received. Raises a professional fundraiser's initial registration fee to \$1,000. Specifies that fiscal records that a professional fundraiser is required
(Continued next page)

Effective: July 1, 1998.

Grubb, Keeler

January 6, 1998, read first time and referred to Committee on Commerce and Economic Development.



Digest Continued

to keep are to be made available to the consumer protection division of the office of the attorney general upon request. Prohibits collection of contributions in person or by courier unless the solicitation was made in person and the attempt to collect is made at the time of solicitation. Specifies the conditions under which a contributor to a professional fundraiser's campaign may cancel the contributor's contribution agreement. 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. Makes it a Class C misdemeanor for the telemarketer to knowingly or intentionally fail to provide the required information.



Introduced

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.

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 8-1-2.6-9 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1998]: **Sec. 9. (a) As used in this section, "telecommunications
4 provider" means a person who:**
5 **(1) offers;**
6 **(2) resells; or**
7 **(3) has tariffs approved to offer or resell;**
8 **telecommunications service in Indiana whether local exchange or**
9 **interexchange. The term includes telephone companies as defined**
10 **in IC 8-1-2-88.**
11 **(b) A customer of a telecommunications provider may not be**
12 **switched to another telecommunications provider unless the**
13 **customer authorizes the switch in writing.**
14 **(c) If the commission finds that a telecommunications provider**
15 **has switched or requested the switch of a customer to the**



1 telecommunications provider's services without the customer's
 2 written authorization, the commission shall do at least one (1) of
 3 the following:

4 (1) Require the violating telecommunications provider to
 5 refund to the customer charges collected in excess of those
 6 that would have been charged by the customer's chosen
 7 telecommunications provider.

8 (2) Require the violating telecommunications provider to pay
 9 to the customer's chosen telecommunications provider the
 10 amount the chosen telecommunications provider would have
 11 collected for the telecommunications service provided to the
 12 customer by the violating telecommunications provider.

13 (3) Require the violating telecommunications provider to pay
 14 a fine of one thousand dollars (\$1,000) for each knowing or
 15 intentional violation of this section other than the first
 16 knowing or intentional violation of this section. The
 17 commission shall recover the fine in a suit brought in the
 18 name of the state of Indiana in the circuit or superior court
 19 having jurisdiction where the violation occurred.

20 (4) Issue a cease and desist order.

21 (5) Revoke the violating telecommunications provider's
 22 certificate of territorial authority issued under IC 8-1-2-88 or
 23 other authorization to provide telecommunications service, if
 24 the violating telecommunications provider has engaged in a
 25 pattern of violations under this chapter.

26 (d) The commission may adopt rules under IC 4-22-2 to
 27 implement this section.

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

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

37 (2) The names and addresses of all persons who own a ten percent
 38 (10%) or more interest in the registrant.

39 (3) A description of any other business related to fundraising
 40 conducted by the registrant or any person who owns ten percent
 41 (10%) or more interest.

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



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.

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

- 39 (1) A copy of the contract described in subsection (e).
40 (2) The projected dates when soliciting will begin and end.
41 (3) The location and telephone number from where solicitation
42 will be conducted.



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

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

9 **(1) The total amount of money collected by the professional**
 10 **fundraiser consultant or the professional solicitor.**

11 **(2) The total amount of money paid to the professional**
 12 **fundraiser consultant or the professional solicitor.**

13 **(3) The total amount of money that the charitable**
 14 **organization paid:**

15 **(A) as expenses as part of the solicitation campaign; and**

16 **(B) to the professional fundraiser consultant or the**
 17 **professional solicitor.**

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

22 SECTION 3. IC 23-7-8-4 IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) A professional fundraiser
 24 consultant or professional solicitor who applies for registration shall
 25 pay a fee of ~~fifty one thousand~~ **fifty one thousand** dollars ~~(\$50)~~ **(\$1,000)**. A partnership,
 26 limited liability company, corporation, or other entity that intends to act
 27 as a professional fundraiser consultant, or professional solicitor, may
 28 register for and pay a single registration fee of ~~fifty one thousand~~ **fifty one thousand**
 29 dollars ~~(\$50)~~ **(\$1,000)** on behalf of its members, officers, agents, and
 30 employees.

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

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

38 SECTION 4. IC 23-7-8-5 IS AMENDED TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 1998]: Sec. 5. **(a)** Every professional fundraiser
 40 consultant and professional solicitor required to register under this
 41 chapter shall keep accurate fiscal records regarding its activities in
 42 Indiana. A professional fundraiser consultant or professional solicitor



1 shall retain the records for at least three (3) years after the end of the
2 period of registration to which they relate.

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

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

- 11 (1) use the fact of registration as an endorsement by the state;
12 (2) use the name "police", "law enforcement", "trooper", "rescue
13 squad", "firemen", or "firefighter" unless a bona fide police, law
14 enforcement, rescue squad, or fire department authorizes its use
15 in writing;
16 (3) misrepresent to anyone that the contribution will be used for
17 a charitable purpose if the person has reason to believe the
18 contribution will not be used for a charitable purpose;
19 (4) misrepresent to anyone that another person endorses the
20 solicitation unless that person has consented in writing to the use
21 of the person's name for the purpose of endorsing the solicitation;
22 ~~or~~
23 (5) misrepresent to anyone that the contribution is solicited on
24 behalf of anyone other than the charitable organization that
25 authorized the solicitation; **or**
26 **(6) collect or attempt to collect a contribution in person or by**
27 **means of a courier unless:**
28 **(A) the solicitation is made in person; and**
29 **(B) the collection or attempt to collect is made at the time**
30 **of the solicitation.**

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

- 34 (1) The paid solicitor has commitments, in writing, from
35 charitable organizations stating that they will accept donated
36 tickets and specifying the number of tickets they are willing to
37 accept.
38 (2) No more contributions for donated tickets are solicited than
39 the number of ticket commitments received from charitable
40 organizations.

41 SECTION 6. IC 23-7-8-10 IS ADDED TO THE INDIANA CODE
42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



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**
4 **knowingly fails to comply with this chapter, at any time.**

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

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

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

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

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

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

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

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

42 **SECTION 7. IC 24-5-12-25 IS ADDED TO THE INDIANA CODE**



- 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 who knowingly or intentionally violates subsection
19 (b) commits a Class C misdemeanor.**

