



Reprinted  
February 3, 1999

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## HOUSE BILL No. 1434

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DIGEST OF HB 1434 (Updated February 2, 1999 5:29 pm - DI 101)

**Citations Affected:** IC 8-1; IC 23-7.

**Synopsis:** Telecommunications customers. Registration of solicitors and fundraisers. Provides that unless a telecommunications provider has a prior written authorization from a customer, the customer may not be: (1) switched to another telecommunications provider; or (2) billed for services added to the customer's service order by the provider. Specifies that a charitable organization that resells used clothing or household items is not subject to the registration and reporting requirements for professional fundraiser consultants and professional solicitors. Requires a professional solicitor to submit the following information to the consumer protection division of the office of the attorney general after a solicitation campaign has ended: (1) the total  
(Continued next page)

**Effective:** July 1, 1999.

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### Grubb, Yount, Hasler

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January 19, 1999, read first time and referred to Committee on Commerce and Economic Development.  
January 28, 1999, amended, reported — Do Pass.  
February 2, 1999, read second time, amended, ordered engrossed.

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HB 1434—LS 7451/DI 101+



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gross amount of money raised by the professional solicitor and the charitable organization; (2) the total amount of money paid to or retained by the professional solicitor; (3) the total amount of expenses paid by the charitable organization, excluding money paid to the professional solicitor; and (4) the total amount of money paid to or retained by the charitable organization, after expenses and money paid to the professional solicitor are deducted. Provides that the consumer protection division may deny or revoke the registration of a professional solicitor who fails to submit this information after the end of a campaign. Provides that at the beginning of each solicitation call, a professional fundraiser consultant or a professional solicitor must state: (1) the name of the company for which the call is being made; (2) the name of the professional fundraiser consultant or professional solicitor; and (3) the phone number and address of the location from which the call is being made. Requires that before soliciting a charitable contribution a person must disclose to the person solicited the percentage of the charitable contribution that will be expended for charitable purposes, after administrative costs and the costs of making the solicitation have been satisfied. Provides that the attorney general may impose fines on professional fundraiser consultants and professional solicitors for the late filing of reports.

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February 3, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## HOUSE BILL No. 1434

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

1 SECTION 1. IC 8-1-29-5 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 1999]: Sec. 5. A customer of a  
3 telecommunications provider may not be:

4 (1) switched to another telecommunications provider; ~~unless the~~  
5 ~~customer authorizes the switch~~; or  
6 (2) billed for services **added to the customer's service order** by  
7 a telecommunications provider; ~~that without the customer's~~  
8 ~~authorization added the services to the customer's service order.~~  
9 **unless the telecommunications provider has prior written**  
10 **authorization from the customer.**

11 SECTION 2. IC 23-7-8-1 IS AMENDED TO READ AS FOLLOWS  
12 [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter:

13 "Charitable organization" means any organization described in  
14 Section 501 of the federal Internal Revenue Code.

15 "Contribution" means a promise or pledge of money, a payment, or

HB 1434—LS 7451/DI 101+



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1 any other rendition of property or service. It does not include the  
 2 payment of membership dues, fines or assessments, or payments for  
 3 property sold or services rendered by the charitable organization, if not  
 4 sold or rendered in connection with a solicitation, and does not include  
 5 a charitable organization that resells used clothing or household items.

6 "Division" means the consumer protection division, office of the  
 7 attorney general.

8 "Person" includes any individual, organization, trust foundation,  
 9 association, partnership, limited liability company, or corporation.

10 "Professional fundraiser consultant" means any person who is hired  
 11 for a fee to plan, manage, advise, or act as a consultant in connection  
 12 with soliciting contributions for, or on behalf of, a charitable  
 13 organization, but who does not actually solicit contributions as a part  
 14 of the person's services or employ, procure, or engage a compensated  
 15 person to solicit contributions. The term does not include a charitable  
 16 organization, or a bona fide officer, employee, member, or volunteer of  
 17 a charitable organization, **that solicits on its own behalf.**

18 "Professional solicitor" means a person who, for a financial  
 19 consideration, solicits contributions for, or on behalf of, a charitable  
 20 organization, either personally or through agents or employees  
 21 specifically employed for that purpose. The term does not include a  
 22 charitable organization, or an officer, **an** employee, **a** member, or **a**  
 23 volunteer of a charitable organization, **that solicits on its own behalf.**

24 "Solicit" means:

25 (1) to request, other than as described in subdivision (2), directly  
 26 or indirectly, financial assistance in any form on the  
 27 representation that the financial assistance will be used for a  
 28 charitable purpose; or

29 (2) to sell, offer, or attempt to sell any advertisement, advertising  
 30 space, membership, or tangible item:

31 (A) in connection with which any appeal is made for any  
 32 charitable organization or purpose;

33 (B) where the name of any charitable organization is used or  
 34 referred to in any appeal made for any charitable organization  
 35 as an inducement or reason for making a sale described in this  
 36 subdivision; or

37 (C) when or where in connection with a sale described in this  
 38 subdivision any statement is made that the whole or any part  
 39 of the proceeds from the sale will be used for any charitable  
 40 purpose or benefit any charitable organization.

41 A solicitation shall be considered to have taken place whether or not  
 42 the person making the solicitation receives any contribution.



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1 SECTION 3. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 1999]: 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  
16 contributions.

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

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

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

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

34 (e) Before a professional solicitor engages in a solicitation, the  
35 professional solicitor must have a contract which is filed with the  
36 division. This contract must specify the percentage of gross  
37 contributions which the charitable organization will receive or the  
38 terms upon which a determination can be made as to the amount of the  
39 gross revenue from the solicitation campaign that the charitable  
40 organization will receive. The amount that the charitable organization  
41 will receive must be expressed as a fixed percentage of the gross  
42 revenue or as a reasonable estimate of the gross revenue. If a fixed



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1 percentage is used, the percentage must exclude any amount that the  
 2 charitable organization is to pay as expenses of the solicitation  
 3 campaign, including the cost of the merchandise or services sold. If  
 4 requested by the charitable organization, the person who solicits must  
 5 at the conclusion of a charitable appeal provide to the charitable  
 6 organization the names and addresses of all contributors, the amount  
 7 of each contribution, and a final accounting of all expenditures. Such  
 8 information may not be used in violation of any trade secret laws. The  
 9 contract must disclose the average percentage of gross contributions  
 10 collected on behalf of charitable organizations that the charitable  
 11 organizations received from the professional solicitor for the three (3)  
 12 years preceding the year in which the contract is formed.

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

- 16 (1) A copy of the contract described in subsection (e).
- 17 (2) The projected dates when soliciting will begin and end.
- 18 (3) The location and telephone number from where solicitation  
 19 will be conducted.
- 20 (4) The name and residence address of each person responsible  
 21 for directing and supervising the conduct of the campaign.  
 22 However, the division shall not divulge the residence address  
 23 unless ordered to do so by a court of competent jurisdiction, or in  
 24 furtherance of the prosecution of a violation under this chapter.
- 25 (5) If the solicitation is one described under section 7(a)(2) of this  
 26 chapter, the solicitation notice must include a copy of the required  
 27 written authorization.

28 (g) **Not later than ninety (90) days** after a solicitation campaign,  
 29 other than a campaign for which a written authorization has been filed  
 30 under subsection (f)(5), has ended, ~~a professional fundraiser consultant~~  
 31 ~~or~~ a professional solicitor shall submit the following information  
 32 concerning the campaign to the division:

- 33 (1) The total **gross** amount of money ~~collected~~ **raised** by the  
 34 professional solicitor **and the charitable organization from**  
 35 **donors.**
- 36 (2) The total amount of money paid to **or retained by** the  
 37 professional solicitor.
- 38 (3) The total amount of money, **not including the amount**  
 39 **identified under subsection (g)(2), that paid by** the charitable  
 40 organization ~~paid~~ as expenses as part of the solicitation campaign.
- 41 (4) The total amount of money ~~received~~ **paid to or retained by**  
 42 the charitable organization **after the amounts identified under**



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1           **subsections (g)(2) and (g)(3) are deducted. The division may**  
 2           **deny or revoke the registration of a professional solicitor who**  
 3           **fails to comply with this subsection.**

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

8           **(i) At the beginning of each solicitation call, a professional**  
 9           **fundraiser consultant and a professional solicitor must state:**

10           **(1) the name of the company for whom the professional**  
 11           **fundraiser consultant or professional solicitor is calling;**

12           **(2) the name of the professional fundraiser consultant or**  
 13           **professional solicitor; and**

14           **(3) the phone number and address of the location from which**  
 15           **the professional fundraiser consultant or professional solicitor**  
 16           **is making the telephone call.**

17           SECTION 4. IC 23-7-8-7 IS AMENDED TO READ AS FOLLOWS  
 18           [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) A person who solicits  
 19           charitable contributions may not:

20           (1) use the fact of registration as an endorsement by the state;  
 21           (2) use the name "police", "law enforcement", "trooper", "rescue  
 22           squad", "firemen", or "firefighter" unless a bona fide police, law  
 23           enforcement, rescue squad, or fire department authorizes its use  
 24           in writing;

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

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

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

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

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

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

41           (b) A person who solicits charitable contributions shall not represent  
 42           that tickets to events will be donated for use by another, unless the

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1 following requirements have been met:

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

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

9 **(c) A person who solicits a charitable contribution must, before**  
10 **making the solicitation to a person, disclose to the person the**  
11 **percentage of the charitable contribution that will be expended for**  
12 **charitable purposes, after administrative costs and the costs of**  
13 **making the solicitation have been satisfied.**

14 SECTION 5. IC 23-7-8-8 IS AMENDED TO READ AS FOLLOWS  
15 [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The division may receive,  
16 investigate, and prosecute complaints concerning the activities of  
17 professional fundraiser consultants and professional solicitors who:

18 (1) may be subject to this chapter; or

19 (2) have or may have violated this chapter.

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

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

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

42 (d) A person who knowingly or intentionally:

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- 1 (1) fails to file a registration statement or other information;  
2 (2) files a statement or other information which is materially false;  
3 or  
4 (3) fails to make a disclosure;  
5 as required by this chapter, commits a Class B misdemeanor. However,  
6 the offense is a Class A misdemeanor if the person has a previous  
7 unrelated conviction under this subsection.
- 8 (e) A local unit of government may adopt an ordinance which  
9 regulates professional fundraisers and solicitors if the ordinance does  
10 not conflict with this chapter.
- 11 (f) A professional fundraiser consultant, or a professional solicitor,  
12 who has the person's principal place of business outside of Indiana, or  
13 who has organized under the laws of another state, and who solicits  
14 contributions from persons in Indiana, is subject to this chapter and  
15 shall be considered to have appointed the secretary of state as his agent.  
16 All service of process under this subsection shall be made on the  
17 secretary of state under Rule 4.10 of the Indiana Rules of Trial  
18 Procedure.
- 19 **(g) Under rules adopted by the attorney general, the attorney**  
20 **general may impose fines on professional fundraiser consultants**  
21 **and professional solicitors for the late filing of information**  
22 **required to be filed under this chapter.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1434, 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 4, line 32, after "deducted." begin a new line blocked left and insert:

**"The division may deny or revoke the registration of a professional solicitor who fails to comply with this subsection."**

and when so amended that said bill do pass.

(Reference is to HB 1434 as introduced.)

CROOKS, Chair

Committee Vote: yeas 13, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 4, between lines 38 and 39, begin a new paragraph and insert:  
 "SECTION 3. IC 23-7-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: 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;
- (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.

**(c) A person who solicits a charitable contribution must, before making the solicitation to a person, disclose to the person the percentage of the charitable contribution that will be expended for charitable purposes, after administrative costs and the costs of**



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**making the solicitation have been satisfied."**

Page 6, line 2, delete "Pursuant to" and insert "**Under**".  
Renumber all SECTIONS consecutively.

(Reference is to HB 1434 as printed January 29, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 1, line 9, strike ".".

Page 1, line 9, after "solicitation" insert ", and does not include a charitable organization that resells used clothing or household items."

(Reference is to HB 1434 as printed January 29, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 4, between lines 38 and 39, begin a new paragraph and insert:

**"(i) At the beginning of each solicitation call, a professional fundraiser consultant and a professional solicitor must state:**

- (1) the name of the company for whom the professional fundraiser consultant or professional solicitor is calling;**
- (2) the name of the professional fundraiser consultant or professional solicitor; and**
- (3) the phone number and address of the location from which the professional fundraiser consultant or professional solicitor is making the telephone call."**

Page 6, line 2, delete "pursuant to" and insert "**under**".

(Reference is to HB 1434 as printed January 29, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. A customer of a telecommunications provider may not be:

(1) switched to another telecommunications provider; ~~unless the customer authorizes the switch;~~ or

(2) billed for services **added to the customer's service order** by a telecommunications provider; ~~that without the customer's authorization added the services to the customer's service order.~~ **unless the telecommunications provider has prior written authorization from the customer.**".

Page 6, line 2, delete "Pursuant to" and insert "**Under**".

(Reference is to HB 1434 as printed January 29, 1999.)

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