

HOUSE BILL No. 1767

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-12.5.

Synopsis: No sales solicitation listing. Requires the consumer protection division of the office of the attorney general to publish a listing of telephone numbers of persons who do not wish to be solicited by telephone. Establishes a \$10 initial listing charge for a person who wishes to be included in the listing, and a \$5 annual renewal fee. Prohibits a telephone solicitor from calling a number that appears in the quarterly listing published by the division. Requires a telephone solicitor who makes an unsolicited telephone call to state the solicitor's name and business immediately upon telephone contact with a consumer. Establishes other requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid. Prohibits the use of an automated dialing system or a recorded message by a telephone solicitor except under specific circumstances. Establishes penalties for violations.

Effective: July 1, 1999.

Sturtz

January 26, 1999, read first time and referred to Committee on Commerce and Economic Development.

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Introduced

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.

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HOUSE BILL No. 1767

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

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

1 SECTION 1. IC 24-5-12.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1999]:

4 **Chapter 12.5. No Sales Solicitation List**

5 **Sec. 1. As used in this chapter, "consumer" means an actual or**
6 **a prospective purchaser, lessee, or recipient of consumer goods or**
7 **services.**

8 **Sec. 2. As used in this chapter, "consumer goods or services"**
9 **means real property or tangible or intangible personal property**
10 **that is normally used for personal, family, or household purposes,**
11 **including:**

- 12 (1) **property intended to be attached to or installed in real**
13 **property without regard to whether it is attached or installed;**
14 (2) **cemetery lots;**
15 (3) **timeshare estates; and**



1 (4) services related to the property.

2 Sec. 3. As used in this chapter, "division" means the consumer
3 protection division of the office of the attorney general.

4 Sec. 4. As used in this chapter, "doing business in this state"
5 refers to a business that conducts telephonic sales calls from a
6 location in Indiana or from other states or nations to consumers
7 located in Indiana.

8 Sec. 5. As used in this chapter, "listing" refers to the no sales
9 solicitation listing published by the division that lists the names of
10 persons who do not wish to receive unsolicited telephonic sales
11 calls.

12 Sec. 6. As used in this chapter, "telephonic sales call" means a
13 call made by a telephone solicitor to a consumer for the purpose of:

- 14 (1) soliciting a sale of consumer goods or services;
15 (2) soliciting an extension of credit for consumer goods or
16 services; or
17 (3) obtaining information that will or may be used for the
18 direct solicitation of a sale of consumer goods or services or
19 an extension of credit for such purposes.

20 Sec. 7. As used in this chapter, "telephone solicitor" means an
21 individual, firm, organization, partnership, association, or
22 corporation doing business in this state that makes or causes to be
23 made a telephonic sales call, including calls made by use of
24 automated dialing or recorded message devices.

25 Sec. 8. As used in this chapter, "unsolicited telephonic sales call"
26 means a telephonic sales call other than a call made:

- 27 (1) in response to an express request of the person called;
28 (2) primarily in connection with an existing debt or contract
29 for which payment or performance has not been completed at
30 the time of the call;
31 (3) to a person with whom the telephone solicitor has a prior
32 or existing business relationship; or
33 (4) by a newspaper publisher or the publisher's agent or
34 employee in connection with that business.

35 Sec. 9. (a) The division shall publish a quarterly listing of
36 telephone numbers of persons who request not to be solicited by
37 telephone.

38 (b) The division shall place the telephone number of a
39 residential, mobile, or telephonic paging device telephone
40 subscriber on the listing if:

- 41 (1) the subscriber notifies the division according to a
42 procedure established by the division; and

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1 (2) the division receives a ten dollar (\$10) initial listing charge
2 for each telephone number listed.

3 **The listing must be renewed by the division annually for each**
4 **telephone number upon receipt of a renewal notice and a five**
5 **dollar (\$5) renewal fee for each telephone number.**

6 (c) The division shall update the listing upon receipt of initial
7 consumer subscriptions or renewals.

8 (d) The division shall, for a fee, provide the listing to telephone
9 solicitors upon the telephone solicitor's request.

10 (e) All fees imposed under this chapter must be deposited in the
11 consumer protection division solicitation fund established by
12 section 10 of this chapter.

13 **Sec. 10. (a) The consumer protection division solicitation fund**
14 **is established for the purpose of the administration of this chapter.**

15 (b) The fund shall be administered by the consumer protection
16 division of the office of the attorney general.

17 (c) Money in the fund at the end of a state fiscal year does not
18 revert to the state general fund.

19 **Sec. 11. (a) A telephone solicitor may not make or cause to be**
20 **made an unsolicited telephonic sales call to a:**

21 (1) residential;

22 (2) mobile; or

23 (3) telephonic paging device;

24 **telephone number if the number for that telephone appears in the**
25 **most current quarterly listing published by the division.**

26 (b) A telephone solicitor who makes an unsolicited telephonic
27 sales call to a residential, mobile, or telephonic paging device
28 telephone number shall disclose the:

29 (1) solicitor's true first and last name; and

30 (2) name of the business on whose behalf the telephone
31 solicitor is soliciting;

32 **immediately upon making contact by telephone with the person**
33 **who is the subject of the telephone solicitation.**

34 (c) A telephone solicitor or person who offers for sale any
35 consumer information that includes:

36 (1) residential;

37 (2) mobile; or

38 (3) telephonic paging device;

39 **telephone numbers, except directory assistance and telephone**
40 **directories sold by telephone companies and organizations exempt**
41 **under 26 U.S.C. 501(c)(3) or (6) of the Internal Revenue Code, shall**
42 **exclude the numbers that appear on the division's most current**

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1 listing.

2 (d) This section does not apply to a person licensed under
3 IC 25-34.1 who calls an actual or prospective seller or lessor of
4 property when the call is made in response to a yard sign or other
5 form of advertisement placed by the seller or lessor.

6 Sec. 12. (a) A contract made under a telephonic sales call is not
7 valid and enforceable against a consumer unless the contract
8 complies with this section.

9 (b) A contract made under a telephonic sales call:

- 10 (1) must be reduced to writing and signed by the consumer;
11 (2) must comply with all other applicable laws and rules;
12 (3) must match the description of goods or services as
13 principally used in the telephone solicitations;
14 (4) must contain the name, address, and telephone number of
15 the seller, the total price of the contract, and a detailed
16 description of the goods or services being sold;
17 (5) must contain, in bold, conspicuous type immediately
18 preceding the signature the words "you are not obligated to
19 pay any money unless you sign this contract and return it to
20 the seller"; and
21 (6) may not exclude from its terms any oral or written
22 representations made by the telephone solicitor to the
23 consumer in connection with the transaction.

24 (c) This section does not apply to:

- 25 (1) a contractual sale regulated under other sections of the
26 Indiana Code;
27 (2) a sale of cable television services to a franchised cable
28 television operator's existing subscribers within that cable
29 television operator's franchise area; or
30 (3) a sale in which no prior payment is made to a merchant
31 and an invoice accompanies the goods or services allowing a
32 consumer seven (7) days to cancel or return without
33 obligation for payment.

34 Sec. 13. (a) A merchant who engages a telephone solicitor to
35 make or cause to be made a telephonic sales call may not:

- 36 (1) make or submit a charge to a consumer's credit card
37 account; or
38 (2) make or cause to be made any electronic transfer of funds;
39 until the merchant receives from the consumer a copy of the
40 contract, signed by the purchaser, that complies with this chapter.

41 (b) A merchant who conducts a credit card account transaction
42 under this chapter is subject to IC 35-43-5-4.



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1 (c) This section does not apply to a transaction:

2 (1) made in accordance with prior negotiations in the course
3 of a visit by a consumer to a merchant that operates a retail
4 business establishment that has a fixed permanent location
5 and where consumer goods are displayed or offered for sale
6 on a continuing basis;

7 (2) in which a consumer may:

8 (A) obtain a full refund for the return of undamaged and
9 unused goods; or

10 (B) within seven (7) days after receipt of merchandise by
11 a consumer, give a cancellation of services notice to a seller
12 and return the merchandise, and the seller will process the
13 refund within thirty (30) days of receipt of the returned
14 merchandise;

15 (3) in which a consumer purchases goods or services under a
16 television, radio, or print advertisement or a sample,
17 brochure, or catalog of a merchant that contains:

18 (A) the name, address, and telephone number of the
19 merchant;

20 (B) a description of the goods or services being sold; and

21 (C) limitations or restrictions that apply to the offer; or

22 (4) in which a merchant is a bona fide charitable organization
23 or a newspaper.

24 Sec. 14. (a) A person may not make or knowingly allow a
25 telephonic sales call to be made if the call involves:

26 (1) an automated system for the selection or dialing of
27 telephone numbers; or

28 (2) the playing of a recorded message when a connection is
29 completed to a number called.

30 (b) This section does not prohibit the use of an automated
31 telephone dialing system with live messages if:

32 (1) a call is made or message is given in response to a call
33 initiated by a person to whom the automatic call or live
34 message is directed;

35 (2) a telephone number selected for automatic dialing has
36 been screened to exclude a telephone subscriber who is
37 included on the division's most recent listing or an unlisted
38 telephone number; or

39 (3) the call concerns goods or services that have been
40 previously ordered or purchased.

41 (c) This section does not relieve a person from complying with
42 IC 24-5-14.

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1 **Sec. 15.** The division shall investigate complaints received
2 concerning violations of this chapter.

3 **Sec. 16.** A telecommunications company shall notify the
4 company's customers of the rights and duties created by this
5 chapter.

6 **Sec. 17.** The division shall ensure that a telecommunications
7 company makes the notification required by section 16 of this
8 chapter. The notification may be made by:

9 (1) annual inserts in the billing statements mailed to
10 customers; and

11 (2) conspicuous publication of notice in the consumer
12 information section of local telephone directories published by
13 the telecommunications company.

14 **Sec. 18.** In addition to any other remedies or penalties under this
15 chapter, a person who is damaged by a telephone solicitor's failure
16 to comply with this chapter or by a telephone solicitor's breach of
17 contract may bring an action for recovery of the person's actual
18 damages, including court costs and attorney's fees.

19 **Sec. 19.** Upon petition by any person that a telephone solicitor
20 has failed to comply with this chapter, the circuit or superior court
21 of the county of residence of the petitioner may enjoin the
22 telephone solicitor from further violations.

23 **Sec. 20.** A telephone solicitor who fails to comply with sections
24 11 through 14 of this chapter commits a Class D felony.

25 **Sec. 21.** A telephone solicitor who fails to comply with any
26 provision of this chapter commits a deceptive act that is actionable
27 by the attorney general under IC 24-5-0.5-4(c) and is subject to the
28 penalties set forth in IC 24-5-0.5. An action by the attorney general
29 for a violation of this chapter may be brought in the circuit or
30 superior court of Marion County.

31 **Sec. 22.** (a) If a person makes a telephonic sales call to a
32 prospective customer outside the course of dealing (as described in
33 IC 26-1-1-205), whether personally, through salespersons, or
34 through the use of an automated dialing and answering device, the
35 person may not knowingly or intentionally block or attempt to
36 block the display of the person's:

37 (1) telephone number; or

38 (2) identity;

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

42 (b) A person who knowingly or intentionally violates this section



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1 **commits a Class B misdemeanor. However, the offense is a Class**
2 **A misdemeanor if the person has a prior unrelated conviction**
3 **under this section.**

4 **Sec. 23. This chapter does not relieve a person from complying**
5 **with any other statute or ordinance.**

6 **Sec. 24. The division may adopt rules under IC 4-22-2 to**
7 **implement this chapter.**

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