



February 18, 2000

**ENGROSSED
SENATE BILL No. 209**

DIGEST OF SB 209 (Updated February 16, 2000 6:55 PM - DI 101)

Citations Affected: IC 24-5.

Synopsis: No sales solicitation listing. Requires telephone solicitors doing business in Indiana to register with the consumer protection division of the office of the attorney general. Provides that a telephone solicitor is not required to register with the division if the telephone solicitor is either registered or exempt from registration under the federal Securities Exchange Act. Requires the division 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. Provides that a subscriber who places the subscriber's telephone number on the listing before July 1, 2000, is not required to pay the initial \$10 listing charge. 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 requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid. Requires the division to notify Indiana residents of the rights and duties created by the establishment of the division's listing and to provide information about alternative listings or do-not-call services and the costs of those listings or services. Establishes criminal penalties and civil remedies for violations of the statute.

Effective: July 1, 2000.

**Long, Lanane, Meeks R, Waterman,
Lutz L, Blade, Riegsecker**
(HOUSE SPONSORS — STURTZ, YOUNT, HASLER)

January 10, 2000, read first time and referred to Committee on Commerce and Consumer Affairs.

January 27, 2000, amended, reported favorably — Do Pass.

January 31, 2000, read second time, ordered engrossed. Engrossed.

February 1, 2000, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

February 7, 2000, read first time and referred to Committee on Commerce and Economic Development.

February 17, 2000, amended, reported — Do Pass.

ES 209—LS 6688/DI 100



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February 18, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

ENGROSSED SENATE BILL No. 209

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations.

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

1 SECTION 1. IC 24-5-12-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. As used in this
3 chapter, "seller" means a person who, personally, through salespersons,
4 or through the use of an automated dialing and answering device,
5 makes a solicitation if in the solicitation any one (1) of the following
6 occurs:

7 (1) There is a false representation or implication that a prospect
8 will receive a gift, prize, or the value of a gift or prize.

9 (2) There is an offer of a vacation at a reduced price if the
10 vacation involves the prospect attending a presentation in which
11 the prospect is solicited to purchase a time share or camping club
12 membership and if the seller does not own the time share or
13 camping club, does not represent the owner of the time share or
14 camping club, or misrepresents the value of the vacation. Terms
15 in this subdivision have the meaning set forth in IC 24-5-9.

16 (3) There is a representation or implication that a prospect who
17 buys office equipment or supplies will, because of some unusual

ES 209—LS 6688/DI 100+



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1 event or imminent price increase; be able to buy these items at
2 prices that are below those that are usually charged or will be
3 charged for the items if the price advantage for the prospect does
4 not exist.

5 (4) There is a false representation or implication as to the identity
6 of the person making the solicitation.

7 (5) There is a representation or implication that the items for sale
8 are manufactured or supplied by a person other than the actual
9 manufacturer or supplier.

10 (6) There is an offer to sell the prospect precious metals; precious
11 stones; coal; or other minerals; or any interest in oil; gas; or
12 mineral fields; wells; or exploration sites; if the seller does not
13 own the items; does not represent the owner; or misrepresents the
14 value of the items: **an individual, a firm, an organization, a
15 partnership, an association, a company including a limited
16 liability company, or a corporation, including affiliates and
17 subsidiaries, doing business in this state, except those subject
18 to 47 CFR parts 64 and 68, that makes or causes to be made
19 a telephonic sales call, including calls made by use of
20 automated dialing or recorded message devices.**

21 SECTION 2. IC 24-5-12-9 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 9. As used in this
23 chapter, "solicitation" means a telephone conversation or attempted
24 telephone conversation in which the seller offers; or attempts to offer;
25 an item to another person in exchange for money or other
26 consideration: **call made by a seller to a consumer for the purpose
27 of:**

- 28 (1) **soliciting a sale of consumer goods or services;**
- 29 (2) **soliciting an extension of credit for consumer goods or
30 services; or**
- 31 (3) **obtaining information that will or may be used for the
32 direct solicitation of a sale of consumer goods or services or
33 an extension of credit for such purposes.**

34 SECTION 3. IC 24-5-12-10 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 10. (a) **This section
36 does not apply to an issuer of a security or a subsidiary of an issuer
37 of a security that has a class of securities that is subject to 15 U.S.C.
38 78l and that is either registered or exempt from registration under
39 paragraph (A), (B), (C), (D), (E), (F), (G), or (H) of 15 U.S.C.
40 78l(g)(2).**

41 (b) Before doing business in Indiana a seller must register with the
42 division if the seller attempts a solicitation under which the seller offers

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1 an item or items where the total consideration has a value of more than
 2 one hundred dollars (\$100) and less than fifty thousand dollars
 3 (\$50,000).

4 ~~(b)~~ (c) A person does business in Indiana if the person solicits:

- 5 (1) from a location in Indiana; or
- 6 (2) a prospect who is located in Indiana.

7 SECTION 4. IC 24-5-12.5 IS ADDED TO THE INDIANA CODE
 8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2000]:

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

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

14 **Sec. 2. As used in this chapter, "consumer goods or services"**
 15 **means real property or tangible or intangible personal property**
 16 **that is normally used for personal, family, or household purposes,**
 17 **including:**

- 18 (1) property intended to be attached to or installed in real
- 19 property without regard to whether it is attached or installed;
- 20 (2) cemetery lots;
- 21 (3) timeshare estates;
- 22 (4) services related to the property; and
- 23 (5) credit cards.

24 **Sec. 3. As used in this chapter, "doing business in Indiana"**
 25 **refers to a business that conducts telephone sales calls from a**
 26 **location in Indiana or from other states or nations to consumers**
 27 **located in Indiana.**

28 **Sec. 4. As used in this chapter, "listing" refers to the no sales**
 29 **solicitation listing published by the consumer protection division**
 30 **of the office of the attorney general that lists the names of persons**
 31 **who do not wish to receive telephone sales calls.**

32 **Sec. 5. As used in this chapter, "office" refers to the consumer**
 33 **protection division of the office of the attorney general.**

34 **Sec. 6. As used in this chapter, "telephone solicitor" means an**
 35 **individual, a firm, an organization, a partnership, an association,**
 36 **or a corporation, including affiliates and subsidiaries, doing**
 37 **business in this state, except those subject to 47 CFR parts 64 and**
 38 **68, that makes or causes to be made a telephone sales call.**

39 **Sec. 7. (a) As used in this chapter, "telephone sales call" means**
 40 **a call made by a telephone solicitor to a consumer for the purpose**
 41 **of:**

- 42 (1) soliciting a sale of consumer goods or services;



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- 1 (2) soliciting an extension of credit for consumer goods or
- 2 services; or
- 3 (3) obtaining information that will or may be used for the
- 4 direct solicitation of a sale of consumer goods or services or
- 5 an extension of credit for such purposes.
- 6 (b) The term does not include any of the following:
- 7 (1) A telephone call made in response to an express request of
- 8 the person called.
- 9 (2) A telephone call made primarily in connection with an
- 10 existing debt or contract for which payment or performance
- 11 has not been completed at the time of the call.
- 12 (3) A telephone call made to a person with whom the
- 13 telephone solicitor has had a business relationship within the
- 14 past eighteen (18) months.
- 15 (4) A telephone call by a newspaper publisher or the
- 16 publisher's agent or employee in connection with that
- 17 business.
- 18 (5) A telephone call made on behalf of a charitable
- 19 organization (as defined in Section 501 of the Internal
- 20 Revenue Code).
- 21 (6) A telephone call made on behalf of a political candidate or
- 22 political party.
- 23 (7) A telephone call made by a person licensed under
- 24 IC 25-34.1 who calls an actual or prospective seller, lessor, or
- 25 purchaser of real property.
- 26 Sec. 8. (a) The office shall publish a quarterly listing of
- 27 telephone numbers of persons who request not to be solicited by
- 28 telephone.
- 29 (b) The office shall place the telephone number of a residential,
- 30 mobile, or telephonic paging device telephone subscriber on the
- 31 listing if:
- 32 (1) the subscriber notifies the office according to a procedure
- 33 established by the office; and
- 34 (2) the office receives a ten dollar (\$10) initial listing charge
- 35 for each telephone number listed.
- 36 The listing for each telephone number must be renewed annually
- 37 by the office upon receipt of a renewal notice and payment of a five
- 38 dollar (\$5) renewal fee for each telephone number. A subscriber
- 39 who places the subscriber's telephone number on the listing before
- 40 July 1, 2000, is not required to pay the initial listing charge
- 41 described in subdivision (2).
- 42 (c) The office shall update the listing upon receipt of initial

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1 consumer subscriptions or renewals.

2 (d) The office shall adopt rules under IC 4-22-2 to establish a fee
3 for providing the listing to telephone solicitors upon the telephone
4 solicitor's request. The fee established under this subsection may
5 not exceed the amount necessary to reimburse the office for the
6 costs of providing the listing to telephone solicitors.

7 (e) All fees imposed under this chapter must be deposited in the
8 consumer protection division solicitation fund established by
9 section 9 of this chapter.

10 Sec. 9. (a) The consumer protection division solicitation fund is
11 established for the purpose of the administration of this chapter
12 and shall be used exclusively for this purpose.

13 (b) The fund shall be administered by the office.

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

16 Sec. 10. (a) A telephone solicitor may not make or cause to be
17 made a telephone sales call to a:

- 18 (1) residential;
- 19 (2) mobile; or
- 20 (3) telephonic paging device;

21 telephone number, if that telephone number appears in the most
22 current quarterly listing published by the office.

23 (b) A telephone solicitor who makes a telephone sales call to a
24 residential, mobile, or telephonic paging device telephone number
25 shall disclose the:

- 26 (1) solicitor's true first and last name; and
- 27 (2) name of the business on whose behalf the telephone
28 solicitor is soliciting;

29 immediately upon making contact by telephone with the person
30 who is the subject of the telephone solicitation.

31 (c) This subsection does not apply to a person obtaining
32 consumer information for inclusion in directory assistance and
33 telephone directories sold by telephone companies and
34 organizations exempt under section 501(c)(3) or section 501(c)(6)
35 of the Internal Revenue Code. A telephone solicitor or person who
36 obtains consumer information that includes:

- 37 (1) residential;
- 38 (2) mobile; or
- 39 (3) telephonic paging device;

40 telephone numbers shall exclude the telephone numbers that
41 appear on the office's most current listing.

42 Sec. 11. (a) A contract made under a telephonic sales call is not

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1 valid and enforceable against a consumer unless the contract
2 complies with this section.

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

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

18 (c) This section does not apply to:

- 19 (1) a contractual sale regulated under other sections of the
20 Indiana Code;
21 (2) a sale of cable television services to a franchised cable
22 television operator's existing subscribers within that cable
23 television operator's franchise area;
24 (3) a sale in which no prior payment is made to a merchant
25 and an invoice accompanies the goods or services allowing a
26 consumer seven (7) days to cancel or return the goods without
27 obligation for payment;
28 (4) a contractual agreement in which payment is required and
29 which allows the consumer at least ten (10) days to cancel the
30 contract and receive a full refund of the payment; or
31 (5) a sale regulated by 170 IAC 7-1.1-19.

32 **Sec. 12. (a)** A merchant who engages a telephone solicitor to
33 make or cause to be made a telephonic sales call may not:

- 34 (1) make or submit a charge to a consumer's credit card
35 account; or
36 (2) make or cause to be made any electronic transfer of funds;

37 until the merchant receives from the consumer a copy of the
38 contract, signed by the purchaser, that complies with this chapter.

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

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

- 42 (1) made in accordance with prior negotiations in the course

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1 of a visit by a consumer to a merchant that operates a retail
 2 business establishment that has a fixed permanent location
 3 and where consumer goods are displayed or offered for sale
 4 on a continuing basis;

5 (2) in which a consumer may:

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

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

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

16 (A) the name, address, and telephone number of the
 17 merchant;

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

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

20 (4) in which a merchant is a bona fide charitable organization
 21 or a newspaper.

22 **Sec. 13. (a) A telephone solicitor may not make or knowingly**
 23 **allow a telephonic sales call to be made if the call involves:**

24 (1) an automated system for the selection or dialing of
 25 telephone numbers; or

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

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

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

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

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

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

41 **Sec. 14. The division shall investigate complaints received**
 42 **concerning violations of this chapter.**



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1 **Sec. 15.** The division shall notify Indiana residents of the rights
 2 and duties created by this chapter. In all communications notifying
 3 Indiana residents of the rights and duties created by this chapter,
 4 the division shall also include information, in the same size and
 5 style of type used throughout the communication, concerning:

6 (1) alternative listings or do-not-call services that are
 7 available to Indiana residents; and

8 (2) the costs, if any, of those alternative listings or services.

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

14 **Sec. 17.** Upon petition by any person that a telephone solicitor
 15 has failed to comply with this chapter, the circuit or superior court
 16 of the county of residence of the petitioner may enjoin the
 17 telephone solicitor from further violations.

18 **Sec. 18.** A telephone solicitor who fails to comply with sections
 19 10 through 13 of this chapter commits a Class D felony.

20 **Sec. 19.** A telephone solicitor who fails to comply with any
 21 provision of this chapter commits a deceptive act that is actionable
 22 by the attorney general under IC 24-5-0.5-4(c) and is subject to the
 23 penalties set forth in IC 24-5-0.5. An action by the attorney general
 24 for a violation of this chapter may be brought in the circuit or
 25 superior court of Marion County.

26 **Sec. 20.** (a) If a telephone solicitor makes a telephonic sales call
 27 to a prospective customer outside the course of dealing (as
 28 described in IC 26-1-1-205), whether personally, through
 29 salespersons, or through the use of an automated dialing and
 30 answering device, the telephone solicitor may not knowingly or
 31 intentionally block or attempt to block the display of the telephone
 32 solicitor's:

33 (1) telephone number; or

34 (2) identity;

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

38 (b) A telephone solicitor who knowingly or intentionally violates
 39 this section commits a Class B misdemeanor. However, the offense
 40 is a Class A misdemeanor if the telephone solicitor has a prior
 41 unrelated conviction under this section.

42 **Sec. 21.** This chapter does not relieve a person from complying



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1 with any other statute or ordinance.

2 Sec. 22. The office may adopt rules under IC 4-22-2 to
3 implement this chapter.

4 SECTION 5. [EFFECTIVE JULY 1, 2000] (a) Notwithstanding
5 IC 24-5-12.5-8, as added by this act, the consumer protection
6 division of the office of the attorney general shall have the listing
7 of telephone numbers described in IC 24-5-12.5-8(a) in operation
8 before January 1, 2001.

9 (b) This SECTION expires January 1, 2002.

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SENATE MOTION

Mr. President: I move that Senators Waterman and Lutz L be added as coauthors of Senate Bill 209.

LONG

SENATE MOTION

Mr. President: I move that Senator Blade be added as coauthor of Senate Bill 209.

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SENATE MOTION

Mr. President: I move that Senator Riegsecker be added as coauthor of Senate Bill 209.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 209, 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 1, delete lines 5 through 17, begin a new paragraph and insert:

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

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

- (1) property intended to be attached to or installed in real property without regard to whether it is attached or installed;**
- (2) cemetery lots;**
- (3) timeshare estates;**
- (4) services related to the property; and**
- (5) credit cards.**

Sec. 3. As used in this chapter, "doing business in Indiana" refers to a business that conducts telephone sales calls from a location in Indiana or from other states or nations to consumers located in Indiana.

Sec. 4. As used in this chapter, "listing" refers to the no sales solicitation listing published by the office of the utility consumer counselor that lists the names of persons who do not wish to receive telephone sales calls.

Sec. 5. As used in this chapter, "office" refers to the office of the utility consumer counselor.

Sec. 6. As used in this chapter, "telephone solicitor" means an individual, a firm, an organization, a partnership, an association, or a corporation, including affiliates and subsidiaries, doing business in this state, except those subject to 47 CFR parts 64 and 68, that makes or causes to be made a telephone sales call.

Sec. 7. (a) As used in this chapter, "telephone sales call" means a call made by a telephone solicitor to a consumer for the purpose of:

- (1) soliciting a sale of consumer goods or services;**
- (2) soliciting an extension of credit for consumer goods or services; or**
- (3) obtaining information that will or may be used for the**



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direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(b) The term does not include any of the following:

(1) A telephone call made in response to an express request of the person called.

(2) A telephone call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(3) A telephone call made to a person with whom the telephone solicitor has had a business relationship within the past eighteen (18) months.

(4) A telephone call made to a person for whom a referral has been received from an existing customer or client of the telephone solicitor. The telephone solicitor must provide the name of the referring customer or client to the person called at the time the call is made.

(5) A telephone call made on behalf of a business that during a year makes not more than five hundred (500) calls:

(A) not otherwise described in this subsection; and

(B) to persons located not more than ten (10) miles from the primary business location of the business.

The telephone solicitor must provide the address of the primary business location of the business at the time the call is made.

(6) A telephone call by a newspaper publisher or the publisher's agent or employee in connection with that business.

(7) A telephone call made on behalf of a charitable organization.

(8) A telephone call made on behalf of a political candidate or political party.

(9) A telephone call made by a person licensed under IC 25-34.1 who calls an actual or prospective seller, lessor, or purchaser of real property.

Sec. 8. (a) The office shall publish a quarterly listing of telephone numbers of persons who request not to be solicited by telephone.

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

(1) the subscriber notifies the office according to a procedure established by the office; and



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

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

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

(d) The office shall adopt rules under IC 4-22-2 to establish a fee for providing the listing to telephone solicitors upon the telephone solicitor's request. The fee established under this subsection may not exceed the amount necessary to reimburse the office for the costs of providing the listing to telephone solicitors.

(e) The office shall furnish the listing free of charge to an organization whose purpose is to create a list of names of people who do not want calls from telephone solicitors. The organization may disseminate the listing to its members instead of a member purchasing the listing from the office. However, the organization must provide notice to the office of the name, address, and phone number of the organization's members to whom the list is disseminated.

(f) All fees imposed under this chapter must be deposited in the utility consumer counselor solicitation fund established by section 9 of this chapter.

Sec. 9. (a) The utility consumer counselor solicitation fund is established for the purpose of the administration of this chapter and shall be used exclusively for this purpose.

(b) The fund shall be administered by the office.

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

Sec. 10. (a) A telephone solicitor may not make or cause to be made a telephone sales call to a:

- (1) residential;
- (2) mobile; or
- (3) telephonic paging device;

telephone number, if that telephone number appears in the most current quarterly listing published by the office.

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

- (1) solicitor's true first and last name; and
- (2) name of the business on whose behalf the telephone solicitor is soliciting;



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

(c) This subsection does not apply to a person obtaining consumer information for inclusion in directory assistance and telephone directories sold by telephone companies and organizations exempt under section 501(c)(3) or section 501(c)(6) of the Internal Revenue Code. A telephone solicitor or person who obtains consumer information that includes:

- (1) residential;
- (2) mobile; or
- (3) telephonic paging device;

telephone numbers shall exclude the telephone numbers that appear on the office's most current listing.

Sec. 11. The office shall investigate complaints received concerning violations of this chapter.

Sec. 12. The office shall notify Indiana residents of the rights and duties created by this chapter.

Sec. 13. A telephone solicitor who knowingly or intentionally fails to comply with section 10 of this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the telephone solicitor has a prior unrelated conviction for an offense under this chapter.

Sec. 14. A telephone solicitor who fails to comply with any provision of this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

Sec. 15. This chapter does not relieve a person from complying with any other statute or ordinance.

Sec. 16. The office may adopt rules under IC 4-22-2 to implement this chapter."

Delete pages 2 through 7.

and when so amended that said bill do pass.

(Reference is to SB 209 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 8, Nays 0.



COPY

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred Senate Bill 209, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-5-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. As used in this chapter, "seller" means a person who, personally, through salespersons, or through the use of an automated dialing and answering device, makes a solicitation if in the solicitation any one (1) of the following occurs:

(1) There is a false representation or implication that a prospect will receive a gift, prize, or the value of a gift or prize.

(2) There is an offer of a vacation at a reduced price if the vacation involves the prospect attending a presentation in which the prospect is solicited to purchase a time share or camping club membership and if the seller does not own the time share or camping club, does not represent the owner of the time share or camping club, or misrepresents the value of the vacation. Terms in this subdivision have the meaning set forth in IC 24-5-9.

(3) There is a representation or implication that a prospect who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices that are below those that are usually charged or will be charged for the items if the price advantage for the prospect does not exist.

(4) There is a false representation or implication as to the identity of the person making the solicitation.

(5) There is a representation or implication that the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(6) There is an offer to sell the prospect precious metals, precious stones, coal, or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, if the seller does not own the items, does not represent the owner, or misrepresents the value of the items: **an individual, a firm, an organization, a partnership, an association, a company including a limited liability company, or a corporation, including affiliates and subsidiaries, doing business in this state, except those subject to 47 CFR parts 64 and 68, that makes or causes to be made**

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a telephonic sales call, including calls made by use of automated dialing or recorded message devices.

SECTION 2. IC 24-5-12-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 9. As used in this chapter, "solicitation" means a ~~telephone conversation or attempted telephone conversation in which the seller offers, or attempts to offer, an item to another person in exchange for money or other consideration:~~ **call made by a seller to a consumer for the purpose of:**

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

SECTION 3. IC 24-5-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 10. (a) **This section does not apply to an issuer of a security or a subsidiary of an issuer of a security that has a class of securities that is subject to 15 U.S.C. 78l and that is either registered or exempt from registration under paragraph (A), (B), (C), (D), (E), (F), (G), or (H) of 15 U.S.C. 78l(g)(2).**

(b) Before doing business in Indiana a seller must register with the division if the seller attempts a solicitation under which the seller offers an item or items where the total consideration has a value of more than one hundred dollars (\$100) and less than fifty thousand dollars (\$50,000).

~~(b)~~ (c) A person does business in Indiana if the person solicits:

- (1) from a location in Indiana; or
- (2) a prospect who is located in Indiana."

Page 2, line 6, delete "office of the utility consumer" and insert **"consumer protection division of the office of the attorney general."**

Page 2, line 7, delete "counselor".

Page 2, line 9, delete "office of the" and insert **"consumer protection division of the office of the attorney general"**.

Page 2, delete line 10.

Page 2, delete lines 34 through 42.

Page 3, delete lines 1 through 4.

Page 3, line 5, delete "(6)" and insert **"(4)"**.

Page 3, line 8, delete "(7)" and insert **"(5)"**.

Page 3, line 9, after "organization" insert **"(as defined in Section**

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501 of the Internal Revenue Code).".

Page 3, line 10, delete "(8)" and insert "**(6)**".

Page 3, line 12, delete "(9)" and insert "**(7)**".

Page 3, line 27, after "number." insert "**A subscriber who places the subscriber's telephone number on the listing before July 1, 2000, is not required to pay the initial listing charge described in subdivision (2).**".

Page 3, delete lines 35 through 42.

Page 4, line 1, delete "(f)" and insert "**(e)**".

Page 4, line 2, delete "utility consumer counselor" and insert "**consumer protection division**".

Page 4, line 4, delete "utility consumer counselor" and insert "**consumer protection division**".

Page 4, between lines 35 and 36, begin a new paragraph and insert:
"Sec. 11. (a) A contract made under a telephonic sales call is not valid and enforceable against a consumer unless the contract complies with this section.

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

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

(c) This section does not apply to:

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



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- (4) a contractual agreement in which payment is required and which allows the consumer at least ten (10) days to cancel the contract and receive a full refund of the payment; or
- (5) a sale regulated by 170 IAC 7-1.1-19.

Sec. 12. (a) A merchant who engages a telephone solicitor to make or cause to be made a telephonic sales call may not:

- (1) make or submit a charge to a consumer's credit card account; or
- (2) make or cause to be made any electronic transfer of funds;

until the merchant receives from the consumer a copy of the contract, signed by the purchaser, that complies with this chapter.

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

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

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

- (A) obtain a full refund for the return of undamaged and unused goods; or
- (B) within seven (7) days after receipt of merchandise by a consumer, give a cancellation of services notice to a seller and return the merchandise, and the seller will process the refund within thirty (30) days after receipt of the returned merchandise;

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

- (A) the name, address, and telephone number of the merchant;
- (B) a description of the goods or services being sold; and
- (C) limitations or restrictions that apply to the offer; or

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

Sec. 13. (a) A telephone solicitor may not make or knowingly allow a telephonic sales call to be made if the call involves:

- (1) an automated system for the selection or dialing of telephone numbers; or
- (2) the playing of a recorded message when a connection is completed to a number called.

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

- (1) a call is made or a message is given in response to a call initiated by a person to whom the automatic call or live message is directed;
- (2) a telephone number selected for automatic dialing has been screened to exclude a telephone subscriber who is included on the division's most recent listing or an unlisted telephone number; or
- (3) the call concerns goods or services that have been previously ordered or purchased.

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

Sec. 14. The division shall investigate complaints received concerning violations of this chapter.

Sec. 15. The division shall notify Indiana residents of the rights and duties created by this chapter. In all communications notifying Indiana residents of the rights and duties created by this chapter, the division shall also include information, in the same size and style of type used throughout the communication, concerning:

- (1) alternative listings or do-not-call services that are available to Indiana residents; and
- (2) the costs, if any, of those alternative listings or services.

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

Sec. 17. Upon petition by any person that a telephone solicitor has failed to comply with this chapter, the circuit or superior court of the county of residence of the petitioner may enjoin the telephone solicitor from further violations.

Sec. 18. A telephone solicitor who fails to comply with sections 10 through 13 of this chapter commits a Class D felony.

Sec. 19. A telephone solicitor who fails to comply with any provision of this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

Sec. 20. (a) If a telephone solicitor makes a telephonic sales call to a prospective customer outside the course of dealing (as

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described in IC 26-1-1-205), whether personally, through salespersons, or through the use of an automated dialing and answering device, the telephone solicitor may not knowingly or intentionally block or attempt to block the display of the telephone solicitor'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 prospective customer.

(b) A telephone solicitor who knowingly or intentionally violates this section commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the telephone solicitor has a prior unrelated conviction under this section."

Page 4, delete lines 36 through 42.

Page 5, delete lines 1 through 8.

Page 5, line 9, delete "Sec. 15." and insert "Sec. 21."

Page 5, line 11, delete "Sec. 16." and insert "Sec. 22."

Page 5, after line 12, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE JULY 1, 2000] (a) Notwithstanding IC 24-5-12.5-8, as added by this act, the consumer protection division of the office of the attorney general shall have the listing of telephone numbers described in IC 24-5-12.5-8(a) in operation before January 1, 2001.

(b) This SECTION expires January 1, 2002."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 209 as printed January 28, 2000.)

BOTTORFF, Chair

Committee Vote: yeas 12, nays 0.

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