

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6484

BILL NUMBER: HB 1037

DATE PREPARED: Jan 20, 2000

BILL AMENDED: Jan 18, 2000

SUBJECT: No sales solicitation listing.

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FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill requires telephone solicitors doing business in the state of Indiana to register with the Office of the Attorney General. It provides that a telephone solicitor is not required to register with the Attorney General if the telephone solicitor is either registered or exempt from registration under the Securities Exchange Act.

It 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. It establishes a \$10 initial listing charge for a person who wishes to be included in the listing and a \$5 annual renewal fee. It requires the Division to provide, for a fee, the listing to a telephone solicitor upon request. It provides that the fee imposed for the listing may not exceed the Division's actual costs in providing the listing to the telephone solicitor.

It prohibits a telephone solicitor from calling a number that appears in the quarterly listing published by the Division. It 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. It establishes other requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid.

It also requires the Division to notify Indiana residents of the rights and duties created by the Division's listing and to provide information about alternative listings or do-not-call services and the costs of those listings or services.

Effective Date: July 1, 2000.

Explanation of State Expenditures: (Revised) This bill requires telephone solicitors not registered or exempt from registration under the Securities Exchange Act and doing business in Indiana to register with the Office of the Attorney General. Under current law, only telephone solicitors who make false

representations or make offers under other fraudulent conditions are required to register with the Office of the Attorney General. This bill would require those telephone solicitors not exempted to register with the Office of the Attorney General. It would also require the Consumer Protection Division of the Office of the Attorney General to publish quarterly a listing of telephone numbers of persons who do not wish to be solicited by telephone. It also requires that the Division notify Indiana residents of the rights and duties created by the provisions of this bill. The Division must also investigate complaints received concerning violations of the provisions listed above. The bill also requires the Division to publish a quarterly listing, notify Indiana residents of their rights and duties, and investigate complaints.

It establishes the Consumer Protection Division Solicitation Fund to be used by the Division to implement the above requirements. The funds collected from the \$10 initial listing charge paid by a person who wishes to be included in the listing and the \$5 annual renewal fee will be deposited in the Fund. The Office of the Attorney General anticipates that the revenue collected from the fees will be sufficient to fund any additional expenses incurred as a result of the bill's provisions.

Background Information: Kentucky's Office of the Attorney General maintains a similar telephone solicitation no-call list. As of March 1999, 43,751 citizens had been placed on the list. Based on an analysis of partial year expenses for Kentucky's program, the annual cost is estimated to be approximately \$200,000 for printing, additional staffing (including one full-time position), advertising, telephone line installation and monthly phone bills, supplies, and postage.

Computer Business Services Inc., a private firm which manages do-not-call programs for the states of Georgia and Oregon, estimates that the cost of listing a single phone number ranges between \$4 and \$6 annually.

Penalty Provision: A telephone solicitor who violates certain provisions of the bill commits a Class D felony. (Other violations constitute a Class B misdemeanor.) The number of telephone solicitors doing business in Indiana is unknown. A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$17,500 in FY 98. Individual facility expenditures range from \$11,900 to \$29,400. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten and a half months. In FY 99, 3,016 offenders were incarcerated for Class D felonies.

Explanation of State Revenues: (Revised) A \$10 initial listing charge is assessed for a person who wishes to be included in the listing with a \$5 annual renewal fee. The Division must provide, for a fee not to exceed the Division's actual cost to provide it, the listing to telephone solicitors upon request. The amount of revenue that these provision will raise will depend on the number of individuals who are willing to pay to be put on the list and the number of telephone solicitors who purchase the listing. All fees collected must be deposited in the Consumer Protection Division Solicitation Fund, which is established for the purpose of administration of the law. Money in the fund does not revert to the State General Fund at the end of a state fiscal year.

A telephone solicitor who fails to comply with the above provisions commits a deceptive act that is actionable by the Attorney General. If convicted, the court may order the solicitor to pay to the state the reasonable costs of the Attorney General's investigation and prosecution related to the action.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class D felony is \$10,000. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the State General Fund.

Explanation of Local Expenditures: Upon petition by any person that a telephone solicitor has failed to comply with the above, the circuit or superior court of the county of residence of the petitioner may enjoin the telephone solicitor from further violations. This provision may increase expenses to the court. The impact will depend on the number of violations and petitions brought before the court.

Penalty Provision: With respect to the Class D felony, if more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. With respect to the Class B misdemeanor, the misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Consumer Protection Division of the Office of the Attorney General and the Department of Correction.

Local Agencies Affected: Trial courts and local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction; Barbara Crawford, Consumer Protection Division, Office of the Attorney General, (317) 232-6201; Bill Bennett, Executive Director, Computer Business Services Inc., (912) 924-4408.