

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

301 State House
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FISCAL IMPACT STATEMENT

LS 6688
BILL NUMBER: SB 209

DATE PREPARED: Feb 22, 2000
BILL AMENDED: Feb 21, 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 Indiana to register with the Consumer Protection Division of the Office of the Attorney General. It 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.

It requires the Division 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 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. It prohibits a telephone solicitor from calling a number that appears in the quarterly listing published by the Division.

It establishes the Consumer Protection Division Solicitation Fund and requires that all fees collected be deposited in the Fund. It requires the Division to report annually to the Regulatory Flexibility Committee on the following for the most recent state fiscal year: (1) The total fees deposited in the Fund. (2) The expenses incurred by the Division in maintaining and promoting the listing. (3) The total number of subscribers to the listing. (4) The number of new subscribers to the listing. (5) The number of subscribers removed from the listing for any reason. It requires the Division also to report to the Regulatory Flexibility Committee on the projected budget required by the Division to administer the program during the current fiscal year. It requires the Regulatory Flexibility Committee to report each year to the Legislative Council on the information the committee receives from the Division.

The bill 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 requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid.

It 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.

It also establishes criminal penalties and civil remedies for violations of the statute.

Effective Date: July 1, 2000.

Explanation of State Expenditures: (Revised) This bill requires telephone solicitors doing business in Indiana to register with the Consumer Protection Division of the Office of the Attorney General. Under certain circumstances, telephone solicitors are already required to register with the Division. This bill requires the Consumer Protection Division of the Office of the Attorney General to publish a quarterly listing of telephone numbers of persons who do not wish to be solicited by telephone. It also requires the Division to 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 provisions requiring the Division to publish a quarterly listing, notify Indiana residents of their rights and duties, and investigate complaints, may increase the Division's expenses. However, this bill establishes the Consumer Protection Division Solicitation Fund to be used by the Division to implement these requirements. This bill provides for an individual desiring to be on the list to initially pay a \$10 fee with a \$5 annual renewal fee to remain listed. There is no initial listing fee for those persons which register prior to July 1, 2000. It also allows the Division to charge telephone solicitors an unspecified amount to obtain copies of the list. All fees would be deposited in the Consumer Protection Division Solicitation Fund.

It is difficult to determine the exact costs necessary to implement this proposal. 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.

The total cost of the program will depend on the number of Indiana residents who wish to add their phone numbers to the do-no-call list. However, based on the fees provided for in this bill, it is expected that revenue to the Consumer Protection Division Solicitation Fund would be sufficient to cover the costs associated with maintaining the list.

The funds and resources required could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The Office of the Attorney General is authorized 267 full-time positions. Of that total, as of February 1, 2000, there are 19 full-time positions vacant. The breakdown of the 19 vacancies by position type and funding source is as follows: 2 attorneys, 3 secretaries and 4 field investigators (General Fund), 1 field auditor and 1 account clerk (Unclaimed Property Division), 3 field investigators and 1 unclassified E5 - (Consumer Protection Division), 3 investigators and 1 clerical assistant (Medicaid). Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The Office of the Attorney General reverted \$517,061 from its operating account at

the end of FY 1999.

A telephone solicitor who violates certain provisions of the bill commits a Class D felony. (Other violations constitute a Class B misdemeanor.) 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 would be assessed for a person who wishes to be listed with a \$5 annual renewal fee. The Division must provide, for a fee, the listing to telephone solicitors upon request. All fees must be deposited in the Consumer Protection Division Solicitation Fund, which is established for the purpose of administering the program. Money in the fund does not revert to the State General Fund at the end of a state fiscal year.

The amount of revenue that this bill will raise will depend on the number of individuals who are willing to pay to be listed and the number of telephone solicitors who purchase the listing. According to the Office of the Attorney General, more than 26,000 Indiana residents have expressed interest in participating in a do-not-call listing. Based on the fees provided for in this bill, it is expected that revenue to the Consumer Protection Division Solicitation Fund would be sufficient to cover the costs associated with maintaining the list.

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

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 A misdemeanor is \$5,000. 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: (Revised) 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.

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. A Class A misdemeanor is punishable by up to one year in jail. A Class B 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: 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; Department of Correction.

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

Information Sources: Indiana Sheriffs Association; Department of Correction; Leeta Williams, Office of the Attorney General, Consumer Protection Division, (502) 696-5398; Bill Bennett, Executive Director, Computer Business Services Inc., (912) 924-4408.