

Adopted      Rejected

# COMMITTEE REPORT

**YES:            12**  
**NO:             0**

**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:*

- 1            Page 1, between the enacting clause and line 1, begin a new
- 2            paragraph and insert:
- 3            "SECTION 1. IC 24-5-12-8 IS AMENDED TO READ AS
- 4            FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. As used in this
- 5            chapter, "seller" means a person who, personally, through salespersons,
- 6            or through the use of an automated dialing and answering device,
- 7            makes a solicitation if in the solicitation any one (1) of the following
- 8            occurs:
- 9            (1) There is a false representation or implication that a prospect
- 10           will receive a gift, prize, or the value of a gift or prize.
- 11           (2) There is an offer of a vacation at a reduced price if the
- 12           vacation involves the prospect attending a presentation in which
- 13           the prospect is solicited to purchase a time share or camping club
- 14           membership and if the seller does not own the time share or

1 camping club; does not represent the owner of the time share or  
 2 camping club; or misrepresents the value of the vacation. Terms  
 3 in this subdivision have the meaning set forth in IC 24-5-9.

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

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

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

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

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

33 (1) **soliciting a sale of consumer goods or services;**

34 (2) **soliciting an extension of credit for consumer goods or**  
 35 **services; or**

36 (3) **obtaining information that will or may be used for the**  
 37 **direct solicitation of a sale of consumer goods or services or**  
 38 **an extension of credit for such purposes.**

1 SECTION 3. IC 24-5-12-10 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 10. (a) **This section**  
 3 **does not apply to an issuer of a security or a subsidiary of an issuer**  
 4 **of a security that has a class of securities that is subject to 15**  
 5 **U.S.C. 78l and that is either registered or exempt from registration**  
 6 **under paragraph (A), (B), (C), (D), (E), (F), (G), or (H) of 15 U.S.C.**  
 7 **78l(g)(2).**

8 (b) Before doing business in Indiana a seller must register with the  
 9 division if the seller attempts a solicitation under which the seller offers  
 10 an item or items where the total consideration has a value of more than  
 11 one hundred dollars (\$100) and less than fifty thousand dollars  
 12 (\$50,000).

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

14 (1) from a location in Indiana; or

15 (2) a prospect who is located in Indiana."

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

19 Page 2, line 7, delete "counselor".

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

22 Page 2, delete line 10.

23 Page 2, delete lines 34 through 42.

24 Page 3, delete lines 1 through 4.

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

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

27 Page 3, line 9, after "organization" insert **"(as defined in Section**  
 28 **501 of the Internal Revenue Code).".**

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

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

31 Page 3, line 27, after "number." insert **"A subscriber who places**  
 32 **the subscriber's telephone number on the listing before July 1,**  
 33 **2000, is not required to pay the initial listing charge described in**  
 34 **subdivision (2).".**

35 Page 3, delete lines 35 through 42.

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

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

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

3 Page 4, between lines 35 and 36, begin a new paragraph and insert:

4 **"Sec. 11. (a) A contract made under a telephonic sales call is not**  
5 **valid and enforceable against a consumer unless the contract**  
6 **complies with this section.**

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

8 **(1) must be reduced to writing and signed by the consumer;**

9 **(2) must comply with all other applicable laws and rules;**

10 **(3) must match the description of goods or services as**  
11 **principally used in the telephone solicitations;**

12 **(4) must contain the name, address, and telephone number of**  
13 **the seller, the total price of the contract, and a detailed**  
14 **description of the goods or services being sold;**

15 **(5) must contain in bold, conspicuous type immediately**  
16 **preceding the signature the words "you are not obligated to**  
17 **pay any money unless you sign this contract and return it to**  
18 **the seller"; and**

19 **(6) may not exclude from its terms any oral or written**  
20 **representations made by the telephone solicitor to the**  
21 **consumer in connection with the transaction.**

22 **(c) This section does not apply to:**

23 **(1) a contractual sale regulated under other sections of the**  
24 **Indiana Code;**

25 **(2) a sale of cable television services to a franchised cable**  
26 **television operator's existing subscribers within that cable**  
27 **television operator's franchise area;**

28 **(3) a sale in which no prior payment is made to a merchant**  
29 **and an invoice accompanies the goods or services allowing a**  
30 **consumer seven (7) days to cancel or return the goods without**  
31 **obligation for payment;**

32 **(4) a contractual agreement in which payment is required and**  
33 **which allows the consumer at least ten (10) days to cancel the**  
34 **contract and receive a full refund of the payment; or**

35 **(5) a sale regulated by 170 IAC 7-1.1-19.**

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

38 **(1) make or submit a charge to a consumer's credit card**

- 1           **account; or**
- 2           **(2) make or cause to be made any electronic transfer of funds;**
- 3           **until the merchant receives from the consumer a copy of the**
- 4           **contract, signed by the purchaser, that complies with this chapter.**
- 5           **(b) A merchant who conducts a credit card account transaction**
- 6           **under this chapter is subject to IC 35-43-5-4.**
- 7           **(c) This section does not apply to a transaction:**
- 8           **(1) made in accordance with prior negotiations in the course**
- 9           **of a visit by a consumer to a merchant that operates a retail**
- 10           **business establishment that has a fixed permanent location**
- 11           **and where consumer goods are displayed or offered for sale**
- 12           **on a continuing basis;**
- 13           **(2) in which a consumer may:**
- 14           **(A) obtain a full refund for the return of undamaged and**
- 15           **unused goods; or**
- 16           **(B) within seven (7) days after receipt of merchandise by**
- 17           **a consumer, give a cancellation of services notice to a seller**
- 18           **and return the merchandise, and the seller will process the**
- 19           **refund within thirty (30) days after receipt of the returned**
- 20           **merchandise;**
- 21           **(3) in which a consumer purchases goods or services under a**
- 22           **television, radio, or print advertisement or a sample,**
- 23           **brochure, or catalog of a merchant that contains:**
- 24           **(A) the name, address, and telephone number of the**
- 25           **merchant;**
- 26           **(B) a description of the goods or services being sold; and**
- 27           **(C) limitations or restrictions that apply to the offer; or**
- 28           **(4) in which a merchant is a bona fide charitable organization**
- 29           **or a newspaper.**
- 30           **Sec. 13. (a) A telephone solicitor may not make or knowingly**
- 31           **allow a telephonic sales call to be made if the call involves:**
- 32           **(1) an automated system for the selection or dialing of**
- 33           **telephone numbers; or**
- 34           **(2) the playing of a recorded message when a connection is**
- 35           **completed to a number called.**
- 36           **(b) This section does not prohibit the use of an automated**
- 37           **telephone dialing system with live messages if:**
- 38           **(1) a call is made or a message is given in response to a call**

1 initiated by a person to whom the automatic call or live  
2 message is directed;

3 (2) a telephone number selected for automatic dialing has  
4 been screened to exclude a telephone subscriber who is  
5 included on the division's most recent listing or an unlisted  
6 telephone number; or

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

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

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

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

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

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

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

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

30 Sec. 18. A telephone solicitor who fails to comply with sections  
31 10 through 13 of this chapter commits a Class D felony.

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

38 Sec. 20. (a) If a telephone solicitor makes a telephonic sales call

1 to a prospective customer outside the course of dealing (as  
 2 described in IC 26-1-1-205), whether personally, through  
 3 salespersons, or through the use of an automated dialing and  
 4 answering device, the telephone solicitor may not knowingly or  
 5 intentionally block or attempt to block the display of the telephone  
 6 solicitor's:

7 (1) telephone number; or  
 8 (2) identity;  
 9 by a caller ID service (as defined by IC 8-1-2.9-1) when attempting  
 10 to initiate a telephone conversation for the purpose of making a  
 11 solicitation to a prospective customer.

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

16 Page 4, delete lines 36 through 42.

17 Page 5, delete lines 1 through 8.

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

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

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

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

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

27 Renumber all SECTIONS consecutively.

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

**and when so amended that said bill do pass.**

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Representative Bottorff