
SENATE BILL No. 382

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-12-8; IC 24-5-12-9; IC 24-5-12.5.

Synopsis: Do not call list. Requires a telephone solicitor doing business in Indiana to register with the office of the attorney general. Requires the consumer protection division of the office of the attorney general to establish and maintain a data base of telephone numbers of residential telephone service subscribers who do not wish to be solicited by telephone. Establishes a \$5 fee for residential subscribers who wish to be included in the data base. Establishes a \$10 annual fee for a person or entity that makes telephone solicitations to access the names in the data base. Requires a telephone solicitor to state the solicitor's identity at the beginning of a telephone solicitation call. Establishes other requirements for telephone solicitations.

Effective: July 1, 2000.

Waterman

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

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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.

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SENATE BILL No. 382



A BILL FOR AN ACT to amend the Indiana Code concerning consumer sales.

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



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 corporation, including affiliates
 16 and subsidiaries, or a company, including a limited liability
 17 company, doing business in Indiana, except an individual or
 18 entity subject to 47 CFR parts 64 and 68, that makes or causes
 19 to be made a telephonic sales call, including calls made by use
 20 of 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: **voice communication over a telephone line to
 27 encourage the purchase of, rental of, or investment in property,
 28 goods, or services.**

29 SECTION 3. IC 24-5-12.5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2000]:

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

33 **Sec. 1. As used in this chapter, "caller identification service"**
 34 **means a type of telephone service that permits a telephone**
 35 **subscriber to see the telephone number of an incoming telephone**
 36 **call.**

37 **Sec. 2. As used in this chapter, "division" refers to the consumer**
 38 **protection division of the office of the attorney general.**

39 **Sec. 3. As used in this chapter, "residential subscriber" means**
 40 **a person who subscribes to residential telephone service from a**
 41 **local exchange telephone company. The term includes other**
 42 **persons living or residing with the residential telephone service**



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1 subscriber.

2 **Sec. 4.** As used in this chapter, "telephone solicitation" means
3 a voice communication over a telephone line to encourage the
4 purchase of, rental of, or investment in property, goods, or
5 services. A telephone solicitation includes a communication from
6 a live operator, through the use of an automatic
7 dialing-announcing device (as defined in IC 24-5-14-1), or by other
8 means. Telephone solicitation does not include a communication:

- 9 (1) in response to an express request of the person called;
10 (2) by or on behalf of a person or entity with whom a
11 residential subscriber has a prior or current business or
12 personal relationship;
13 (3) primarily in connection with an existing debt or contract
14 for which payment or performance has not been completed at
15 the time of the call;
16 (4) on behalf of a charitable organization; or
17 (5) on behalf of a political candidate or political party.

18 **Sec. 5.** A person or entity shall not make or cause to be made a
19 telephone solicitation to the telephone line of a residential
20 subscriber in Indiana if the residential subscriber has given notice
21 to the division, in accordance with section 6 of this chapter, of the
22 subscriber's objection to receiving telephone solicitations.

23 **Sec. 6. (a)** The division shall establish and maintain a data base
24 to compile a list of telephone numbers of residential subscribers
25 who object to receiving telephone solicitations.

26 (b) The data base may be operated by the division or by another
27 entity under contract with the division.

28 (c) The division shall adopt rules under IC 4-22-2 to do the
29 following:

- 30 (1) Require each local exchange telephone company to inform
31 the company's residential subscribers of the opportunity to
32 provide notification to the division or the division's contractor
33 that the subscriber objects to receiving telephone solicitations.
34 (2) Specify the methods by which a residential subscriber may
35 give notice to the division or the division's contractor of the
36 subscriber's objection to receiving solicitations or the method
37 by which a subscriber may revoke the notice of objection.
38 (3) Specify the length of time for which a subscriber's notice
39 of objection is effective and how the change of a subscriber's
40 telephone number would affect the notice.
41 (4) Specify the methods by which an objection and revocation
42 must be collected and added to the data base.



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1 (5) Specify the methods by which a person or entity that
2 makes telephone solicitations may obtain access to the data
3 base as required by this chapter.

4 (6) Other actions necessary to implement this chapter.

5 (d) If, under 47 U.S.C. 227(c)(3), the Federal Communications
6 Commission establishes a single national data base of telephone
7 numbers of subscribers who object to receiving telephone
8 solicitations, the division shall include the part of the single
9 national data base that relates to Indiana in the data base
10 established by this chapter.

11 Sec. 7. A residential subscriber shall be charged a fee of five
12 dollars (\$5), payable to the division, for each telephone number
13 included in the data base established by this chapter.

14 Sec. 8. A person or entity that makes a telephone solicitation
15 shall be charged a fee of ten dollars (\$10) per year, payable to the
16 division, for access to or for paper or electronic copies of the data
17 base established by this chapter.

18 Sec. 9. Information contained in the data base established by
19 this chapter shall be used only to comply with this chapter or in a
20 proceeding or action under section 12, 13, or 14 of this chapter and
21 is not subject to public inspection or disclosure under IC 5-14-3.

22 Sec. 10. (a) An individual or entity that makes a telephone
23 solicitation to the telephone line of a residential subscriber in
24 Indiana shall, at the beginning of the call, clearly state the identity
25 of the person or entity initiating the call.

26 (b) A person or entity that makes a telephone solicitation to the
27 telephone line of a residential subscriber in this state shall not
28 knowingly use a method to block or otherwise circumvent a
29 subscriber's use of a caller identification service.

30 Sec. 11. The division shall investigate complaints received
31 concerning violations of this chapter.

32 Sec. 12. In addition to other remedies or penalties under this
33 chapter, a person who receives more than one (1) telephone
34 solicitation within a twelve (12) month period by or on behalf of the
35 same person or entity in violation of section 5 or 10 of this chapter
36 may:

37 (1) bring an action to recover the person's actual damages
38 from each knowing violation; or

39 (2) receive up to two thousand dollars (\$2,000) in damages for
40 each knowing violation;

41 whichever is greater.

42 Sec. 13. Upon petition by any person that a person or entity that

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1 makes telephone solicitations has failed to comply with this
 2 chapter, the circuit or superior court with jurisdiction in the
 3 county of residence of the petitioner may enjoin the person or
 4 entity that makes the telephone solicitations from further
 5 violations.

6 **Sec. 14.** A person or entity that makes telephone solicitations
 7 and fails to comply with any provision of this chapter commits a
 8 deceptive act that is actionable by the attorney general under
 9 IC 24-5-0.5-4(c) and is subject to the penalties set forth in
 10 IC 24-5-0.5. An action by the attorney general for a violation of this
 11 chapter may be brought in the circuit or superior court of Marion
 12 County.

13 **Sec. 15.** It is a defense in an action or a proceeding brought
 14 under section 12, 13, or 14 of this chapter that the defendant had
 15 established and implemented, with due care, reasonable practices
 16 and procedures to effectively prevent telephone solicitations in
 17 violation of this chapter.

18 **Sec. 16.** An action or a proceeding may not be brought under
 19 section 12, 13, or 14 of this chapter more than two (2) years after:

- 20 (1) the occurrence of the alleged violation; or
- 21 (2) the termination of a proceeding or an action by the
- 22 attorney general;

23 whichever is later.

24 **Sec. 17.** A provider of a telephone caller identification service is
 25 not liable for violations of this chapter committed by another
 26 person or entity.

27 **Sec. 18.** This chapter does not relieve a person from complying
 28 with any other statute or ordinance.

29 SECTION 4. [EFFECTIVE JULY 1, 2000] (a) Notwithstanding
 30 IC 24-5-12.5-6, as added by this act, the consumer protection
 31 division of the office of the attorney general shall have the data
 32 base described in IC 24-5-12.5-6(a), as added by this act, in
 33 operation before January 1, 2001.

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

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