
HOUSE BILL No. 1037

DIGEST OF INTRODUCED BILL

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

Synopsis: No sales solicitation listing. Requires telephone solicitors doing business in the state of Indiana to register with the office of the attorney general. 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. Establishes a \$10 initial listing charge for a person who wishes to be included in the listing and a \$5 annual renewal fee. 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 other requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid.

Effective: July 1, 2000.

Sturtz

January 10, 2000, read first time and referred to Committee on Commerce & Economic Development.

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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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HOUSE BILL No. 1037



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

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, or a corporation, including
 16 affiliates and subsidiaries, doing business in this state, except
 17 those subject to 47 CFR parts 64 and 68, that makes or causes
 18 to be made a telephonic sales call, including calls made by use
 19 of automated dialing or recorded message devices.**

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

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

28 (2) **soliciting an extension of credit for consumer goods or**
 29 **services; or**

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

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

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

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

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



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- 1 including:
- 2 (1) property intended to be attached to or installed in real
- 3 property without regard to whether it is attached or installed;
- 4 (2) cemetery lots;
- 5 (3) timeshare estates; and
- 6 (4) services related to the property.
- 7 Sec. 3. As used in this chapter, "division" refers to the consumer
- 8 protection division of the office of the attorney general.
- 9 Sec. 4. As used in this chapter, "doing business in this state"
- 10 refers to a business that conducts telephonic sales calls:
- 11 (1) from a location in Indiana; or
- 12 (2) to a consumer located in Indiana.
- 13 Sec. 5. As used in this chapter, "listing" refers to the no sales
- 14 solicitation listing published by the division that lists the names of
- 15 persons who do not wish to receive unsolicited telephonic sales
- 16 calls.
- 17 Sec. 6. As used in this chapter, "telephonic sales call" means a
- 18 call made by a telephone solicitor to a consumer for the purpose of:
- 19 (1) soliciting a sale of consumer goods or services;
- 20 (2) soliciting an extension of credit for consumer goods or
- 21 services; or
- 22 (3) obtaining information that will or may be used for the
- 23 direct solicitation of a sale of consumer goods or services or
- 24 an extension of credit for such purposes.
- 25 Sec. 7. As used in this chapter, "telephone solicitor" means an
- 26 individual, a firm, an organization, a partnership, an association,
- 27 or a corporation, including affiliates and subsidiaries, doing
- 28 business in this state, except those subject to 47 CFR parts 64 and
- 29 68, that makes or causes to be made a telephonic sales call,
- 30 including calls made by use of automated dialing or recorded
- 31 message devices.
- 32 Sec. 8. As used in this chapter, "unsolicited telephonic sales call"
- 33 means a telephonic sales call other than a call made:
- 34 (1) in response to an express request of the person called;
- 35 (2) primarily in connection with an existing debt or contract
- 36 for which payment or performance has not been completed at
- 37 the time of the call;
- 38 (3) to a person with whom the telephone solicitor has a prior
- 39 or existing business relationship;
- 40 (4) by a newspaper publisher or the publisher's agent or
- 41 employee in connection with that business;
- 42 (5) on behalf of a charitable organization; or



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1 (6) on behalf of a political candidate or political party.

2 Sec. 9. (a) The division shall publish a quarterly listing of
3 telephone numbers of persons who request not to be solicited by
4 telephone.

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

8 (1) the subscriber notifies the division according to a
9 procedure established by the division; and

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

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

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

17 (d) The division shall, for a fee, provide the listing to telephone
18 solicitors upon the telephone solicitor's request.

19 (e) All fees imposed under this chapter must be deposited in the
20 consumer protection division solicitation fund established by
21 section 10 of this chapter.

22 Sec. 10. (a) The consumer protection division solicitation fund
23 is established for the purpose of the administration of this chapter.

24 (b) The fund shall be administered by the consumer protection
25 division of the office of the attorney general.

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

28 Sec. 11. (a) A telephone solicitor may not make or cause to be
29 made an unsolicited telephonic sales call to a:

30 (1) residential;

31 (2) mobile; or

32 (3) telephonic paging device;

33 telephone number if the number for that telephone appears in the
34 most current quarterly listing published by the division.

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

38 (1) solicitor's true first and last name; and

39 (2) name of the business on whose behalf the telephone
40 solicitor is soliciting;

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



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1 (c) A telephone solicitor or person who obtains consumer
2 information that includes:

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

6 telephone numbers, except directory assistance and telephone
7 directories sold by telephone companies and organizations exempt
8 under 26 U.S.C. 501(c)(3) or (6) of the Internal Revenue Code, shall
9 exclude the numbers that appear on the division's most current
10 listing.

11 (d) This section does not apply to a person licensed under
12 IC 25-34.1 who calls an actual or prospective seller or lessor of
13 property when the call is made in response to a yard sign or other
14 form of advertisement placed by the seller or lessor.

15 Sec. 12. (a) A contract made under a telephonic sales call is not
16 valid and enforceable against a consumer unless the contract
17 complies with this section.

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

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

33 (c) This section does not apply to:

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



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

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

5 **Sec. 13. (a) A merchant who engages a telephone solicitor to
 6 make or cause to be made a telephonic sales call may not:**

7 (1) make or submit a charge to a consumer's credit card
 8 account; or

9 (2) make or cause to be made any electronic transfer of funds;
 10 until the merchant receives from the consumer a copy of the
 11 contract, signed by the purchaser, that complies with this chapter.

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

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

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

20 (2) in which a consumer may:

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

23 (B) within seven (7) days after receipt of merchandise by
 24 a consumer, give a cancellation of services notice to a seller
 25 and return the merchandise, and the seller will process the
 26 refund within thirty (30) days of receipt of the returned
 27 merchandise;

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

31 (A) the name, address, and telephone number of the
 32 merchant;

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

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

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

37 **Sec. 14. (a) A telephone solicitor may not make or knowingly
 38 allow a telephonic sales call to be made if the call involves:**

39 (1) an automated system for the selection or dialing of
 40 telephone numbers; or

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

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

3 (1) a call is made or message is given in response to a call
4 initiated by a person to whom the automatic call or live
5 message is directed;

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

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

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

14 Sec. 15. The division shall investigate complaints received
15 concerning violations of this chapter.

16 Sec. 16. The division shall notify Indiana residents of the rights
17 and duties created by this chapter.

18 Sec. 17. In addition to any other remedies or penalties under this
19 chapter, a person who is damaged by a telephone solicitor's failure
20 to comply with this chapter or by a telephone solicitor's breach of
21 contract may bring an action for recovery of the person's actual
22 damages, including court costs and attorney's fees.

23 Sec. 18. Upon petition by any person that a telephone solicitor
24 has failed to comply with this chapter, the circuit or superior court
25 of the county of residence of the petitioner may enjoin the
26 telephone solicitor from further violations.

27 Sec. 19. A telephone solicitor who fails to comply with sections
28 11 through 14 of this chapter commits a Class D felony.

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

35 Sec. 21. (a) If a telephone solicitor makes a telephonic sales call
36 to a prospective customer outside the course of dealing (as
37 described in IC 26-1-1-205), whether personally, through
38 salespersons, or through the use of an automated dialing and
39 answering device, the telephone solicitor may not knowingly or
40 intentionally block or attempt to block the display of the telephone
41 solicitor's:

42 (1) telephone number; or

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(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.

Sec. 22. This chapter does not relieve a person from complying with any other statute or ordinance.

Sec. 23. The division may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 4. [EFFECTIVE JULY 1, 2000] (a) Notwithstanding IC 24-5-12.5-9, 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 24-5-12.5-9(a) in operation before January 1, 2001.

(b) This SECTION expires January 1, 2002.

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