

# HOUSE BILL No. 1134

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Telemarketing. Requires telephone solicitors 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 \$500 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. Appropriates a sum of money from the state general fund sufficient to carry out the program for the period beginning July 1, 2000, and ending June 30, 2001. Establishes other requirements for telephone solicitations.

**Effective:** July 1, 2000.

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January 10, 2000, read first time and referred to Committee on Commerce and 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. 1134



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and to make an appropriation.

*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 Indiana, 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: **voice communication over a telephone line to  
 26 encourage the purchase of, rental of, or investment in property,  
 27 goods, or services.**

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

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

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

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

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



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1           **Sec. 4. As used in this chapter, "telephone solicitation" means**  
 2 **a voice communication over a telephone line for the purpose of**  
 3 **encouraging the purchase of, rental of, or investment in property,**  
 4 **goods, or services. A telephone solicitation includes a**  
 5 **communication from a live operator, through the use of an**  
 6 **automatic dialing-announcing device (as defined in IC 24-5-14-1),**  
 7 **or by other means. Telephone solicitation does not include a**  
 8 **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) This section does not apply to a person licensed under**  
 19 **IC 25-34.1 who calls an actual or prospective seller or lessor of**  
 20 **property when the call is made in response to a yard sign or other**  
 21 **form of advertisement placed by the seller or lessor.**

22           **(b) A person or entity shall not make or cause to be made a**  
 23 **telephone solicitation to the telephone line of a residential**  
 24 **subscriber in Indiana if the residential subscriber has given notice**  
 25 **to the division, in accordance with section 6 of this chapter, of the**  
 26 **subscriber's objection to receiving telephone solicitations.**

27           **Sec. 6. (a) The division shall establish and maintain a data base**  
 28 **of telephone numbers of residential subscribers who object to**  
 29 **receiving telephone solicitations.**

30           **(b) The data base may be operated by the division or by another**  
 31 **entity under contract with the division.**

32           **(c) The division shall adopt rules under IC 4-22-2 to do the**  
 33 **following:**

- 34           **(1) Require each local exchange telephone company to inform**  
 35 **the company's residential subscribers of the opportunity to**  
 36 **provide notification to the division or the division's contractor**  
 37 **that the subscriber objects to receiving telephone solicitations.**  
 38           **(2) Specify the methods by which a residential subscriber may**  
 39 **give notice to the division or the division's contractor of the**  
 40 **subscriber's objection to receiving solicitations or the method**  
 41 **by which a subscriber may revoke the notice of objection.**  
 42           **(3) Specify the length of time for which a subscriber's notice**



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1 of objection is effective and how the change of a subscriber's  
2 telephone number would affect the notice.

3 (4) Specify the methods by which an objection and revocation  
4 must be collected and added to the data base.

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

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

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

15 Sec. 7. (a) A person or entity that makes a telephone solicitation  
16 shall be charged a fee of five hundred dollars (\$500) per year,  
17 payable to the division, for access to or for paper or electronic  
18 copies of the data base established by this chapter.

19 (b) A fee imposed under this section must be deposited in the  
20 consumer protection division solicitation fund established by  
21 section 8 of this chapter.

22 Sec. 8. (a) The consumer protection division solicitation fund is  
23 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. 9. Information contained in the data base established by  
29 this chapter shall be used only for the purpose of compliance with  
30 this chapter or in a proceeding or action under section 13 or 14 of  
31 this chapter and is not subject to public inspection or disclosure  
32 under IC 5-14-3.

33 Sec. 10. (a) A person or entity that makes a telephone  
34 solicitation to the telephone line of a residential subscriber in  
35 Indiana shall, at the beginning of the call, state clearly the identity  
36 of the person or entity initiating the call.

37 (b) A person or entity that makes a telephone solicitation to the  
38 telephone line of a residential subscriber in Indiana shall not  
39 knowingly use a method to block or otherwise circumvent a  
40 subscriber's use of a caller identification service.

41 Sec. 11. The division shall investigate complaints received  
42 concerning violations of this chapter.



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1           **Sec. 12.** A person who receives a telephone solicitation by or on  
2 behalf of a person or entity in violation of section 5 or 10 of this  
3 chapter may request the attorney general's office to take action.

4           **Sec. 13.** Upon petition by any person that a person or entity that  
5 makes telephone solicitations has failed to comply with this  
6 chapter, the circuit or superior court with jurisdiction in the  
7 county of residence of the petitioner may enjoin the person or  
8 entity that makes the telephone solicitations from further  
9 violations.

10           **Sec. 14.** A person or entity that makes telephone solicitations  
11 and fails to comply with any provision of this chapter commits a  
12 deceptive act that is actionable by the attorney general under  
13 IC 24-5-0.5-4(c) and is subject to the penalties set forth in  
14 IC 24-5-0.5. In addition, the attorney general may bring an action  
15 to receive two thousand dollars (\$2,000) in damages for each  
16 knowing violation. An action by the attorney general for a violation  
17 of this chapter may be brought in the jurisdiction where the offense  
18 occurred.

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

24           **Sec. 16.** An action or proceeding may not be brought under  
25 section 13 or 14 of this chapter more than two (2) years after the  
26 later of:

- 27           (1) the occurrence of the alleged violation; or  
28           (2) the termination of any proceeding or action by the  
29 attorney general.

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

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

35           **SECTION 4.** [EFFECTIVE JULY 1, 2000] (a) Notwithstanding  
36 IC 24-5-12.5-6, as added by this act, the consumer protection  
37 division of the office of the attorney general shall have the data  
38 base described in IC 24-5-12.5-6(a), as added by this act, in  
39 operation before January 1, 2001.

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

41           **SECTION 5.** [EFFECTIVE JULY 1, 2000] (a) There is  
42 appropriated from the state general fund to the consumer

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1     **protection division solicitation fund created by IC 24-5-12.5-8, as**  
2     **added by this act, a sum sufficient to carry out the purposes of**  
3     **IC 24-5-12.5, as added by this act, for the period beginning July 1,**  
4     **2000, and ending June 30, 2001.**

5         **(b) This SECTION expires July 1, 2001.**

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