



January 28, 2000

SENATE BILL No. 209

DIGEST OF SB 209 (Updated January 25, 2000 4:25 PM - DI 75)

Citations Affected: IC 24-5.

Synopsis: No sales solicitation listing. Requires the office of the utility consumer counselor 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 office of the utility consumer counselor. 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 criminal penalties and civil remedies for violations of the statute.

Effective: July 1, 2000.

**Long, Lanane, Meeks R, Waterman,
Lutz L, Blade, Riegsecker**

January 10, 2000, read first time and referred to Committee on Commerce and Consumer Affairs.
January 27, 2000, amended, reported favorably — Do Pass.

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SB 209—LS 6688/DI 100+



January 28, 2000

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.

SENATE BILL No. 209

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations.

Be it enacted by the General Assembly of the State of Indiana:

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

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

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

8 **Sec. 2. As used in this chapter, "consumer goods or services"**
9 **means real property or tangible or intangible personal property**
10 **that is normally used for personal, family, or household purposes,**
11 **including:**

- 12 (1) **property intended to be attached to or installed in real**
13 **property without regard to whether it is attached or installed;**
14 (2) **cemetery lots;**
15 (3) **timeshare estates;**
16 (4) **services related to the property; and**
17 (5) **credit cards.**

SB 209—LS 6688/DI 100+



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1 **Sec. 3.** As used in this chapter, "doing business in Indiana"
2 refers to a business that conducts telephone sales calls from a
3 location in Indiana or from other states or nations to consumers
4 located in Indiana.

5 **Sec. 4.** As used in this chapter, "listing" refers to the no sales
6 solicitation listing published by the office of the utility consumer
7 counselor that lists the names of persons who do not wish to receive
8 telephone sales calls.

9 **Sec. 5.** As used in this chapter, "office" refers to the office of the
10 utility consumer counselor.

11 **Sec. 6.** As used in this chapter, "telephone solicitor" means an
12 individual, a firm, an organization, a partnership, an association,
13 or a corporation, including affiliates and subsidiaries, doing
14 business in this state, except those subject to 47 CFR parts 64 and
15 68, that makes or causes to be made a telephone sales call.

16 **Sec. 7. (a)** As used in this chapter, "telephone sales call" means
17 a call made by a telephone solicitor to a consumer for the purpose
18 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 **(b)** The term does not include any of the following:

- 26 (1) A telephone call made in response to an express request of
27 the person called.
28 (2) A telephone call made primarily in connection with an
29 existing debt or contract for which payment or performance
30 has not been completed at the time of the call.
31 (3) A telephone call made to a person with whom the
32 telephone solicitor has had a business relationship within the
33 past eighteen (18) months.
34 (4) A telephone call made to a person for whom a referral has
35 been received from an existing customer or client of the
36 telephone solicitor. The telephone solicitor must provide the
37 name of the referring customer or client to the person called
38 at the time the call is made.
39 (5) A telephone call made on behalf of a business that during
40 a year makes not more than five hundred (500) calls:
41 (A) not otherwise described in this subsection; and
42 (B) to persons located not more than ten (10) miles from

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- 1 the primary business location of the business.
2 The telephone solicitor must provide the address of the
3 primary business location of the business at the time the call
4 is made.
5 (6) A telephone call by a newspaper publisher or the
6 publisher's agent or employee in connection with that
7 business.
8 (7) A telephone call made on behalf of a charitable
9 organization.
10 (8) A telephone call made on behalf of a political candidate or
11 political party.
12 (9) A telephone call made by a person licensed under
13 IC 25-34.1 who calls an actual or prospective seller, lessor, or
14 purchaser of real property.
15 Sec. 8. (a) The office shall publish a quarterly listing of
16 telephone numbers of persons who request not to be solicited by
17 telephone.
18 (b) The office shall place the telephone number of a residential,
19 mobile, or telephonic paging device telephone subscriber on the
20 listing if:
21 (1) the subscriber notifies the office according to a procedure
22 established by the office; and
23 (2) the office receives a ten dollar (\$10) initial listing charge
24 for each telephone number listed.
25 The listing for each telephone number must be renewed annually
26 by the office upon receipt of a renewal notice and payment of a five
27 dollar (\$5) renewal fee for each telephone number.
28 (c) The office shall update the listing upon receipt of initial
29 consumer subscriptions or renewals.
30 (d) The office shall adopt rules under IC 4-22-2 to establish a fee
31 for providing the listing to telephone solicitors upon the telephone
32 solicitor's request. The fee established under this subsection may
33 not exceed the amount necessary to reimburse the office for the
34 costs of providing the listing to telephone solicitors.
35 (e) The office shall furnish the listing free of charge to an
36 organization whose purpose is to create a list of names of people
37 who do not want calls from telephone solicitors. The organization
38 may disseminate the listing to its members instead of a member
39 purchasing the listing from the office. However, the organization
40 must provide notice to the office of the name, address, and phone
41 number of the organization's members to whom the list is
42 disseminated.

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1 (f) All fees imposed under this chapter must be deposited in the
2 utility consumer counselor solicitation fund established by section
3 9 of this chapter.

4 Sec. 9. (a) The utility consumer counselor solicitation fund is
5 established for the purpose of the administration of this chapter
6 and shall be used exclusively for this purpose.

7 (b) The fund shall be administered by the office.

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

10 Sec. 10. (a) A telephone solicitor may not make or cause to be
11 made a telephone sales call to a:

- 12 (1) residential;
13 (2) mobile; or
14 (3) telephonic paging device;

15 telephone number, if that telephone number appears in the most
16 current quarterly listing published by the office.

17 (b) A telephone solicitor who makes a telephone sales call to a
18 residential, mobile, or telephonic paging device telephone number
19 shall disclose the:

- 20 (1) solicitor's true first and last name; and
21 (2) name of the business on whose behalf the telephone
22 solicitor is soliciting;

23 immediately upon making contact by telephone with the person
24 who is the subject of the telephone solicitation.

25 (c) This subsection does not apply to a person obtaining
26 consumer information for inclusion in directory assistance and
27 telephone directories sold by telephone companies and
28 organizations exempt under section 501(c)(3) or section 501(c)(6)
29 of the Internal Revenue Code. A telephone solicitor or person who
30 obtains consumer information that includes:

- 31 (1) residential;
32 (2) mobile; or
33 (3) telephonic paging device;

34 telephone numbers shall exclude the telephone numbers that
35 appear on the office's most current listing.

36 Sec. 11. The office shall investigate complaints received
37 concerning violations of this chapter.

38 Sec. 12. The office shall notify Indiana residents of the rights
39 and duties created by this chapter.

40 Sec. 13. A telephone solicitor who knowingly or intentionally
41 fails to comply with section 10 of this chapter commits a Class A
42 misdemeanor. However, the offense is a Class D felony if the

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1 telephone solicitor has a prior unrelated conviction for an offense
2 under this chapter.

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

9 Sec. 15. This chapter does not relieve a person from complying
10 with any other statute or ordinance.

11 Sec. 16. The office may adopt rules under IC 4-22-2 to
12 implement this chapter.

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SENATE MOTION

Mr. President: I move that Senators Waterman and Lutz be added as coauthors of Senate Bill 209.

LONG

SENATE MOTION

Mr. President: I move that Senator Blade be added as coauthor of Senate Bill 209.

LONG

SENATE MOTION

Mr. President: I move that Senator Riegsecker be added as coauthor of Senate Bill 209.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 209, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 5 through 17, begin a new paragraph and insert:

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

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

- (1) property intended to be attached to or installed in real property without regard to whether it is attached or installed;**
- (2) cemetery lots;**
- (3) timeshare estates;**
- (4) services related to the property; and**
- (5) credit cards.**

Sec. 3. As used in this chapter, "doing business in Indiana" refers to a business that conducts telephone sales calls from a location in Indiana or from other states or nations to consumers located in Indiana.

Sec. 4. As used in this chapter, "listing" refers to the no sales solicitation listing published by the office of the utility consumer counselor that lists the names of persons who do not wish to receive telephone sales calls.

Sec. 5. As used in this chapter, "office" refers to the office of the utility consumer counselor.

Sec. 6. As used in this chapter, "telephone solicitor" means an individual, a firm, an organization, a partnership, an association, or a corporation, including affiliates and subsidiaries, doing business in this state, except those subject to 47 CFR parts 64 and 68, that makes or causes to be made a telephone sales call.

Sec. 7. (a) As used in this chapter, "telephone sales call" means a call made by a telephone solicitor to a consumer for the purpose of:

- (1) soliciting a sale of consumer goods or services;**
- (2) soliciting an extension of credit for consumer goods or services; or**
- (3) obtaining information that will or may be used for the**



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direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(b) The term does not include any of the following:

(1) A telephone call made in response to an express request of the person called.

(2) A telephone call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

(3) A telephone call made to a person with whom the telephone solicitor has had a business relationship within the past eighteen (18) months.

(4) A telephone call made to a person for whom a referral has been received from an existing customer or client of the telephone solicitor. The telephone solicitor must provide the name of the referring customer or client to the person called at the time the call is made.

(5) A telephone call made on behalf of a business that during a year makes not more than five hundred (500) calls:

(A) not otherwise described in this subsection; and

(B) to persons located not more than ten (10) miles from the primary business location of the business.

The telephone solicitor must provide the address of the primary business location of the business at the time the call is made.

(6) A telephone call by a newspaper publisher or the publisher's agent or employee in connection with that business.

(7) A telephone call made on behalf of a charitable organization.

(8) A telephone call made on behalf of a political candidate or political party.

(9) A telephone call made by a person licensed under IC 25-34.1 who calls an actual or prospective seller, lessor, or purchaser of real property.

Sec. 8. (a) The office shall publish a quarterly listing of telephone numbers of persons who request not to be solicited by telephone.

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

(1) the subscriber notifies the office according to a procedure established by the office; and



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

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

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

(d) The office shall adopt rules under IC 4-22-2 to establish a fee for providing the listing to telephone solicitors upon the telephone solicitor's request. The fee established under this subsection may not exceed the amount necessary to reimburse the office for the costs of providing the listing to telephone solicitors.

(e) The office shall furnish the listing free of charge to an organization whose purpose is to create a list of names of people who do not want calls from telephone solicitors. The organization may disseminate the listing to its members instead of a member purchasing the listing from the office. However, the organization must provide notice to the office of the name, address, and phone number of the organization's members to whom the list is disseminated.

(f) All fees imposed under this chapter must be deposited in the utility consumer counselor solicitation fund established by section 9 of this chapter.

Sec. 9. (a) The utility consumer counselor solicitation fund is established for the purpose of the administration of this chapter and shall be used exclusively for this purpose.

(b) The fund shall be administered by the office.

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

Sec. 10. (a) A telephone solicitor may not make or cause to be made a telephone sales call to a:

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

telephone number, if that telephone number appears in the most current quarterly listing published by the office.

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

- (1) solicitor's true first and last name; and
- (2) name of the business on whose behalf the telephone solicitor is soliciting;



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

(c) This subsection does not apply to a person obtaining consumer information for inclusion in directory assistance and telephone directories sold by telephone companies and organizations exempt under section 501(c)(3) or section 501(c)(6) of the Internal Revenue Code. A telephone solicitor or person who obtains consumer information that includes:

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

telephone numbers shall exclude the telephone numbers that appear on the office's most current listing.

Sec. 11. The office shall investigate complaints received concerning violations of this chapter.

Sec. 12. The office shall notify Indiana residents of the rights and duties created by this chapter.

Sec. 13. A telephone solicitor who knowingly or intentionally fails to comply with section 10 of this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the telephone solicitor has a prior unrelated conviction for an offense under this chapter.

Sec. 14. A telephone solicitor who fails to comply with any provision of this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

Sec. 15. This chapter does not relieve a person from complying with any other statute or ordinance.

Sec. 16. The office may adopt rules under IC 4-22-2 to implement this chapter."

Delete pages 2 through 7.

and when so amended that said bill do pass.

(Reference is to SB 209 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 8, Nays 0.

SB 209—LS 6688/DI 100+



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