April 6, 2007

ENGROSSED
HOUSE BILL No. 1046

DIGEST OF HB 1046 (Updated April 3, 2007 5:01 pm - DI 106)

Citations Affected: IC 24-5.

Synopsis: False or misleading caller identification. Prohibits a person from transmitting false or misleading caller ID information through a caller ID service offered to a subscriber in Indiana. Exempts: (1) the blocking of caller ID information; and (2) lawful investigative activities. Provides that a violation of the prohibition is: (1) a Class B misdemeanor; and (2) a deceptive act actionable by the attorney general. Provides that a subsequent violation is a Class A misdemeanor. Provides a cause of action for: (1) damages; and (2) injunctive relief; for any person aggrieved by a violation. Prohibits a person from knowingly obtaining confidential customer records from a telecommunications service provider through certain false or fraudulent means. Provides that a person shall not knowingly and with

(Continued next page)

Effective: July 1, 2007.

Dickinson, Pierce, Koch

(SENATE SPONSORS — KRUSE, STEELE)

January 8, 2007, read first time and referred to Committee on Technology, Research and Development.
February 15, 2007, amended, reported — Do Pass.
February 19, 2007, read second time, ordered engrossed. Engrossed.
February 20, 2007, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 27, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
April 5, 2007, amended, reported favorably — Do Pass.

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Digest Continued

intent to defraud: (1) sell or transfer; (2) purchase, receive, or use; or (3) disclose or allow access to; a provider's confidential customer records without the customer's prior authorization. Exempts: (1) lawful investigative activities; and (2) certain disclosures by a telecommunications service provider. Requires a provider to notify affected customers of any unauthorized acquisition or disclosure of confidential customer records. Provides that a violation of a prohibited act is: (1) a Class B misdemeanor; and (2) a deceptive act actionable by the attorney general. Provides that a subsequent violation is a Class D felony. Provides a cause of action for damages or injunctive relief for any person aggrieved by a violation. Exempts bona fide public opinion surveys and persons conducting public opinion surveys from the prohibition against using automatic dialing-announcing devices.

C o p y

April 6, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1046

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

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

SECTION 1. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars ($500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

(1) three (3) times the actual damages of the consumer suffering the loss; or

(2) one thousand dollars ($1,000).

Except as provided in subsection ~~(j),~~ **(k),** the court may award reasonable ~~attorney~~ **attorney's** fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)),

except for purchases of time shares and camping club memberships. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, ~~or~~ IC 24-5-14, **IC 24-5-14.5, or IC 24-5-14.6.** Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection ~~(j),~~ **(k),** the court may award reasonable ~~attorney~~ **attorney's** fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act. However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

(1) issue an injunction;

(2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;

(3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and

(4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the

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court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars ($15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars ($5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars ($1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars ($500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

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If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

SECTION 2. IC 24-5-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) As used in this chapter, "commercial telephone solicitation" means any unsolicited call to a subscriber when:

(1) the person initiating the call has not had a prior business or personal relationship with the subscriber; and

(2) the purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) The term does not include calls initiated by the following:

(1) The state or a political subdivision (as defined by IC 36-1-2-13) for exclusively public purposes.

(2) The United States or any of its subdivisions for exclusively public purposes (involving real property in Indiana).

(3) A person conducting a public opinion poll, if the person does not solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

SECTION 3. IC 24-5-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) This section does not apply to messages:

(1) from school districts to students, parents, or employees;

(2) to subscribers with whom the caller has a current business or personal relationship; ~~or~~

(3) advising employees of work schedules; **or**

(4) surveying public opinion, if the survey does not include a solicitation for the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) A caller may not use or connect to a telephone line an automatic dialing-announcing device unless:

(1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or

(2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

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SECTION 4. IC 24-5-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14.5. False or Misleading Caller Identification

Sec. 1. This chapter applies to the transmission of information through a caller ID service with respect to calls made after June 30, 2007, to a subscriber.

Sec. 2. As used in this chapter, "caller ID information" means information provided to a subscriber by a caller ID service that identifies:

(1) the telephone number from which a call is being placed;

(2) the name of the caller;

(3) the information described in both subdivisions (1) and (2); or

(4) other information concerning the origination of the call.

Sec. 3. As used in this chapter, "caller ID service" means a service offered by a telecommunications service provider that permits a telecommunications service customer equipped with a display device to view caller ID information before answering the call.

Sec. 4. As used in this chapter, "subscriber" means a telecommunications service customer that subscribes to a caller ID service offered by a telecommunications service provider.

Sec. 5. (a) As used in this chapter, "telecommunications service provider":

(1) has the meaning set forth in IC 8-1-2.9-0.5; and

(2) includes an employee, officer, or agent of the telecommunications service provider acting in the course of the person's employment or relationship with the telecommunications service provider.

(b) The term includes a person that offers any of the following:

(1) Voice over Internet Protocol (VOIP).

(2) Voice over power lines.

(3) Any form of wireless telephone service, including the following:

(A) Cellular telephone service.

(B) Broadband personal communications service.

(C) Covered specialized mobile radio service.

(D) Any successor technology, including next generation or third generation service.

Sec. 6. Except as provided in section 7 of this chapter, a person shall not knowingly cause false or misleading caller ID information

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to be transmitted through a caller ID service offered to a subscriber in Indiana.

Sec. 7. Subject to IC 24-5-12-25, this chapter does not prohibit or restrict:

(1) blocking the capability of a caller ID service to transmit caller ID information;

(2) any lawfully authorized investigative, protective, or intelligence activity of:

(A) the United States;

(B) the state or a political subdivision of the state; or

(C) any other state or a political subdivision of that state;

(3) any other lawful action of:

(A) a law enforcement agency; or

(B) any officer, employee, or agent of a law enforcement agency;

in connection with the performance of the official duties of the agency; or

(4) any action permitted by federal law or regulation.

Sec. 8. A person who knowingly violates this chapter commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this chapter.

Sec. 9. (a) A person who violates this chapter commits a deceptive act that is:

(1) actionable by the attorney general under IC 24-5-0.5-4(c); and

(2) subject to the penalties set forth in IC 24-5-0.5.

(b) 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. 10. (a) Except as provided in section 11 of this chapter, any person who is aggrieved by a violation of this chapter may bring an action for the recovery of the person's actual damages, including court costs and attorney's fees, against any person:

(1) responsible for; or

(2) who knowingly participated in;

the violation. An action under this subsection may be brought in the circuit or superior court of the aggrieved person's county of residence or principal place of business in Indiana.

(b) Upon petition by any person that another person has violated this chapter, the circuit or superior court of the petitioner's county of residence or principal place of business in

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Indiana may enjoin the respondent from further violations. The injunctive relief available under this subsection is in addition to any damages to which a person may be entitled under subsection (a).

Sec. 11. A person does not have a cause of action against a telecommunications service provider for a violation of this chapter unless the violation results from the telecommunications service provider's gross negligence or intentional wrongdoing.

SECTION 5. IC 24-5-14.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14.6. Customer Records of Telecommunications Service Providers

Sec. 1. (a) As used in this section, "confidential customer records" refers to any of the following:

(1) Information that:

(A) relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by a customer of a telecommunications service provider; and

(B) is made available to the telecommunications service provider by the customer solely by virtue of the relationship between the customer and telecommunications service provider.

(2) Information contained in any:

(A) bill;

(B) itemization; or

(C) account statement;

issued to a customer by a telecommunications service provider for telecommunications service offered by the provider and subscribed to by the customer.

(b) The term does not include:

(1) information collected for or on behalf of customers subscribing to caller ID service (as defined in IC 24-5-14.5-3) or other similar technologies;

(2) collective data:

(A) that:

(i) is maintained by a telecommunications service provider; and

(ii) relates to a group or category of services or customers; and

(B) from which individual customer identities and

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characteristics have been removed; or

(3) subscriber list information (as defined in 47 U.S.C. 222(h)(3)).

Sec. 2. (a) As used in this chapter, "telecommunications service provider":

(1) has the meaning set forth in IC 8-1-2.9-0.5; and

(2) includes an employee, officer, or agent of the telecommunications service provider acting in the course of the person's employment or relationship with the telecommunications service provider.

(b) The term includes a person that offers any of the following:

(1) Voice over Internet Protocol (VOIP).

(2) Voice over power lines.

(3) Any form of wireless telephone service, including the following:

(A) Cellular telephone service.

(B) Broadband personal communications service.

(C) Covered specialized mobile radio service.

(D) Any successor technology, including next generation or third generation service.

Sec. 3. Except as provided in section 7 of this chapter, a person shall not knowingly obtain, or attempt or conspire to obtain, confidential customer records from a telecommunications service provider by doing any of the following:

(1) Making false or fraudulent statements or representations to a telecommunications service provider.

(2) Making false or fraudulent statements or representations to a customer of a telecommunications service provider.

(3) Providing, through any means, including the Internet, a document or other information to a telecommunications service provider if the person knows that the document or other information:

(A) is forged, counterfeit, lost, or stolen;

(B) was obtained fraudulently or without the customer's consent; or

(C) contains a false or fraudulent statement or representation.

(4) Accessing one (1) or more customer accounts of a telecommunications service provider:

(A) through the Internet without the customer's prior authorization; or

(B) by:

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(i) accessing without authorization; or

(ii) exceeding the person's authorized access to;

a computer data base maintained by the telecommunications service provider.

Sec. 4. Except as provided in section 7 of this chapter, a person shall not knowingly sell or transfer, or attempt or conspire to sell or transfer, confidential customer records of a telecommunications service provider without the prior authorization of the customer to whom the records pertain.

Sec. 5. Except as provided in section 7 of this chapter, a person shall not knowingly:

(1) purchase, receive, or use; or

(2) attempt or conspire to purchase, receive, or use;

confidential customer records of a telecommunications service provider without the prior authorization of the customer to whom the records pertain.

Sec. 6. Except as provided in section 7 of this chapter, a person shall not knowingly and with intent to defraud:

(1) disclose or allow access to; or

(2) attempt or conspire to:

(A) disclose; or

(B) allow access to;

confidential customer records of a telecommunications service provider without the prior authorization of the customer to whom the records pertain.

Sec. 7. (a) This chapter does not prohibit or restrict:

(1) any lawfully authorized investigative, protective, or intelligence activity of:

(A) the United States;

(B) the state or a political subdivision of the state; or

(C) any other state or a political subdivision of that state; or

(2) any other lawful action of:

(A) a law enforcement agency; or

(B) any officer, employee, or agent of a law enforcement agency;

in connection with the performance of the official duties of the agency.

(b) Section 6 of this chapter does not apply to a telecommunications service provider that discloses or allows access to confidential customer records of the telecommunications service provider:

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(1) in response to a lawful request from:
(A) a unit of government described in subsection (a)(1); or
(B) a law enforcement agency;
(2) in compliance with a state or federal law or a court order;
(3) to another telecommunications service provider to the extent necessary to provide telecommunications service between or within service areas; or
(4) to a communications service provider (as defined in IC 8-1-32.5-4) that provides communications service (as defined in IC 8-1-32.5-3) to a customer of the telecommunications service provider over the lines or other infrastructure of the telecommunications service provider, to the extent necessary for the communications service provider to provide the communications service subscribed to by the customer.

(c) Notwithstanding sections 5 and 6 of this chapter, a telecommunications service provider may use, disclose, or permit access to confidential customer records of the telecommunications service provider:
(1) as otherwise authorized by state or federal law; or
(2) to the extent necessary to:
(A) test the security procedures or systems of the telecommunications service provider for maintaining the confidentiality of customer records and information; or
(B) investigate an allegation of misconduct or negligence on the part of an employee, officer, or agent of the telecommunications service provider.

Sec. 8. (a) This section applies to a violation of this chapter that occurs after June 30, 2007.

(b) Except as provided in subsections (c), (g), and (h), this section applies to a telecommunications service provider that discovers or is notified that confidential customer records of the telecommunications service provider have been:
(1) disclosed to; or
(2) acquired by;
an unauthorized person in violation of this chapter. A telecommunications service provider to whom this section applies shall notify, in accordance with this chapter, Indiana customers whose confidential customer records were disclosed or acquired in violation of this chapter.

(c) This subsection applies to:
(1) a third party; or

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(2) an affiliate of a telecommunications service provider;
that maintains or administers confidential customer records on behalf of the telecommunications service provider. If a third party or an affiliate described in this subsection discovers or is notified of a violation described in subsection (b), the third party or affiliate shall immediately notify the telecommunications service provider of the violation, subject to subsection (d).

(d) A person required by this section to provide notice of a violation of this chapter shall provide the notice:

(1) without unreasonable delay; and

(2) in a manner consistent with:

(A) the legitimate needs of law enforcement or the attorney general, as described in subsection (e); and

(B) any measures necessary to:

(i) determine the scope of the violation; and

(ii) restore the reasonable integrity of the confidential customer records of the telecommunications service provider.

(e) A notice required under this section:

(1) may be delayed if a law enforcement agency or the attorney general determines that the notice will impede a criminal or civil investigation of the violation of this chapter; and

(2) shall be made immediately after the law enforcement agency or the attorney general determines that the notice will not compromise the investigation.

(f) Except as provided in subsection (g), a telecommunications service provider shall provide any notice required under this section by one (1) or both of the following methods:

(1) To each affected Indiana customer by:

(A) United States mail; or

(B) electronic mail, if the customer has provided the telecommunications service provider with the customer's electronic mail address.

(2) By doing both of the following:

(A) Conspicuously posting notice of the violation on the web site of the telecommunications service provider, if the telecommunications service provider maintains a web site.

(B) Providing notice of the breach to major news reporting media in the geographic area in which Indiana customers affected by the violation reside.

(g) A telecommunications service provider that maintains its

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own customer notification procedures as part of an information privacy policy or a security policy is not required to provide separate notice under this section if the telecommunications service provider's information privacy policy or security policy is at least as stringent as the notice requirements described in this section.

(h) If a violation described in subsection (b) involves the unauthorized acquisition or disclosure of confidential customer records that include any personal information (as defined in IC 24-4.9-2-10) of the affected Indiana customers:

(1) the telecommunications service provider; and

(2) any person described in subsection (c), if applicable;

shall provide notice in accordance with IC 24-4.9 instead of this section.

(i) A person that:

(1) is required to give notice under subsection (b) or (c); and

(2) fails:

(A) to give the required notice; or

(B) to give the notice in accordance with this section;

commits a deceptive act that is actionable only by the attorney general under this subsection. However, a failure to provide any required notice in connection with a related series of violations of this chapter constitutes one (1) deceptive act for purposes of this subsection. The attorney general may bring an action to obtain any remedy available under IC 24-4.9-4-2 for the breach of the security of a data system.

Sec. 9. (a) Subject to subsection (c), this section applies to a violation of this chapter, other than a violation of section 8 of this chapter, that occurs after June 30, 2007.

(b) A person who knowingly violates this chapter commits a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous unrelated conviction under this chapter.

(c) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

only the violation of section 4, 5, or 6 of this chapter may be prosecuted under this section.

Sec. 10. (a) Subject to subsection (c), this section applies to a violation of this chapter, other than a violation of section 8 of this chapter, that occurs after June 30, 2007.

(b) A person who violates this chapter commits a deceptive act

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that is:

(1) actionable by the attorney general under IC 24-5-0.5-4(c); and

(2) 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.

(c) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

only the violation of section 4, 5, or 6 of this chapter is a deceptive act subject to IC 24-5-0.5.

Sec. 11. (a) Subject to subsection (d), this section applies to a violation of this chapter, other than a violation of section 8 of this chapter, that occurs after June 30, 2007.

(b) Except as provided in section 12 of this chapter, a person who is aggrieved by a violation of this chapter may bring an action against any other person:

(1) responsible for; or

(2) who knowingly participated in;

the violation. An action under this subsection may be brought in the circuit or superior court of the county of residence of the person bringing the action.

(c) A person who brings an action under subsection (b) may seek any or all of the following damages:

(1) Statutory damages of five hundred dollars ($500) for each violation of this chapter.

(2) The person's actual damages, including court costs and attorney's fees.

(d) Upon petition by any person that another person has violated this chapter, the circuit or superior court of the petitioner's county of residence or principal place of business in Indiana may enjoin the respondent from further violations. The injunctive relief available under this subsection is in addition to any damages to which the petitioner may be entitled under subsection (c).

(e) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

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only the violation of section 4, 5, or 6 of this chapter is actionable by a person, including a customer, under this section.

Sec. 12. A customer does not have a cause of action against a telecommunications service provider for a violation of this chapter unless the violation resulted from the telecommunications service provider's gross negligence or intentional wrongdoing.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred House Bill 1046, 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:

Page 2, line 3, delete "or IC 24-5-14.5." and insert "**IC 24-5-14.5, or IC 24-5-14.6.**".

Page 6, after line 17, begin a new paragraph and insert:

"SECTION 3. IC 24-5-14.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14.6. Customer Records of Telecommunications Service Providers

Sec. 1. (a) As used in this section, "confidential customer records" refers to any of the following:

(1) Information that:

(A) relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by a customer of a telecommunications service provider; and

(B) is made available to the telecommunications service provider by the customer solely by virtue of the relationship between the customer and telecommunications service provider.

(2) Information contained in any:

(A) bill;

(B) itemization; or

(C) account statement;

issued to a customer by a telecommunications service provider for telecommunications service offered by the provider and subscribed to by the customer.

(b) The term does not include:

(1) information collected for or on behalf of customers subscribing to caller ID service (as defined in IC 24-5-14.5-3) or other similar technologies;

(2) collective data:

(A) that:

(i) is maintained by a telecommunications service provider; and

(ii) relates to a group or category of services or customers; and

(B) from which individual customer identities and

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characteristics have been removed; or

(3) subscriber list information (as defined in 47 U.S.C. 222(h)(3)).

Sec. 2. (a) As used in this chapter, "telecommunications service provider":

(1) has the meaning set forth in IC 8-1-2.9-0.5; and

(2) includes an employee, officer, or agent of the telecommunications service provider acting in the course of the person's employment or relationship with the telecommunications service provider.

(b) The term includes a person that offers any of the following:

(1) Voice over Internet Protocol (VOIP).

(2) Voice over power lines.

(3) Any form of wireless telephone service, including the following:

(A) Cellular telephone service.

(B) Broadband personal communications service.

(C) Covered specialized mobile radio service.

(D) Any successor technology, including next generation or third generation service.

Sec. 3. Except as provided in section 7 of this chapter, a person shall not knowingly obtain, or attempt or conspire to obtain, confidential customer records from a telecommunications service provider by doing any of the following:

(1) Making false or fraudulent statements or representations to a telecommunications service provider.

(2) Making false or fraudulent statements or representations to a customer of a telecommunications service provider.

(3) Providing, through any means, including the Internet, a document or other information to a telecommunications service provider if the person knows that the document or other information:

(A) is forged, counterfeit, lost, or stolen;

(B) was obtained fraudulently or without the customer's consent; or

(C) contains a false or fraudulent statement or representation.

(4) Accessing one (1) or more customer accounts of a telecommunications service provider:

(A) through the Internet without the customer's prior authorization; or

(B) by:

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(i) accessing without authorization; or

(ii) exceeding the person's authorized access to;

a computer data base maintained by the telecommunications service provider.

Sec. 4. Except as provided in section 7 of this chapter, a person shall not knowingly sell or transfer, or attempt or conspire to sell or transfer, confidential customer records of a telecommunications service provider without the prior authorization of the customer to whom the records pertain.

Sec. 5. Except as provided in section 7 of this chapter, a person shall not knowingly:

(1) purchase, receive, or use; or

(2) attempt or conspire to purchase, receive, or use;

confidential customer records of a telecommunications service provider without the prior authorization of the customer to whom the records pertain.

Sec. 6. Except as provided in section 7 of this chapter, a person shall not knowingly:

(1) disclose or allow access to; or

(2) attempt or conspire to:

(A) disclose; or

(B) allow access to;

confidential customer records of a telecommunications service provider without the prior authorization of the customer to whom the records pertain.

Sec. 7. (a) This chapter does not prohibit or restrict:

(1) any lawfully authorized investigative, protective, or intelligence activity of:

(A) the United States;

(B) the state or a political subdivision of the state; or

(C) any other state or a political subdivision of that state; or

(2) any other lawful action of:

(A) a law enforcement agency; or

(B) any officer, employee, or agent of a law enforcement agency;

in connection with the performance of the official duties of the agency.

(b) Section 6 of this chapter does not apply to a telecommunications service provider that discloses or allows access to confidential customer records of the telecommunications service provider:

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(1) in response to a lawful request from:

(A) a unit of government described in subsection (a)(1); or

(B) a law enforcement agency;

(2) in compliance with a state or federal law or a court order;

(3) to another telecommunications service provider to the extent necessary to provide telecommunications service between or within service areas; or

(4) to a communications service provider (as defined in IC 8-1-32.5-4) that provides communications service (as defined in IC 8-1-32.5-3) to a customer of the telecommunications service provider over the lines or other infrastructure of the telecommunications service provider, to the extent necessary for the communications service provider to provide the communications service subscribed to by the customer.

(c) Notwithstanding sections 5 and 6 of this chapter, a telecommunications service provider may use, disclose, or permit access to confidential customer records of the telecommunications service provider:

(1) for any of the purposes set forth in 47 U.S.C. 222(d); or

(2) to the extent necessary to:

(A) test the security procedures or systems of the telecommunications service provider for maintaining the confidentiality of customer records and information; or

(B) investigate an allegation of misconduct or negligence on the part of an employee, officer, or agent of the telecommunications service provider.

Sec. 8. (a) This section applies to a violation of this chapter that occurs after June 30, 2007.

(b) Except as provided in subsections (c), (h), and (i), this section applies to a telecommunications service provider that discovers or is notified that confidential customer records of the telecommunications service provider have been:

(1) disclosed to; or

(2) acquired by;

an unauthorized person in violation of this chapter. A telecommunications service provider to whom this section applies shall notify each Indiana customer whose confidential customer records were disclosed or acquired in violation of this chapter.

(c) This subsection applies to:

(1) a third party; or

(2) an affiliate of a telecommunications service provider;

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that maintains or administers confidential customer records on behalf of the telecommunications service provider. If a third party or an affiliate described in this subsection discovers or is notified of a violation described in subsection (b), the third party or affiliate shall immediately notify the telecommunications service provider of the violation, subject to subsection (d).

(d) A person required by this section to provide notice of a violation of this chapter shall provide the notice:

(1) without unreasonable delay; and

(2) in a manner consistent with:

(A) the legitimate needs of law enforcement or the attorney general, as described in subsection (e); and

(B) any measures necessary to:

(i) determine the scope of the violation; and

(ii) restore the reasonable integrity of the confidential customer records of the telecommunications service provider.

(e) A notice required under this section:

(1) may be delayed if a law enforcement agency or the attorney general determines that the notice will impede a criminal or civil investigation of the violation of this chapter; and

(2) shall be made immediately after the law enforcement agency or the attorney general determines that the notice will not compromise the investigation.

(f) Except as provided in subsections (g) and (h), a telecommunications service provider shall provide any notice required under this section to an affected Indiana customer:

(1) by United States mail; or

(2) by electronic mail, if the customer has provided the telecommunications service provider with the customer's electronic mail address.

(g) If a telecommunications service provider is required to provide notice under this section to more than five hundred thousand (500,000) Indiana customers, or if the telecommunications service provider determines that the cost of the notice to all affected Indiana customers will be more than two hundred fifty thousand dollars ($250,000), the telecommunications service provider may elect to provide the notice by using both of the following methods:

(1) Conspicuous posting of the notice on the web site of the telecommunications service provider, if the

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telecommunications service provider maintains a web site.

(2) Notice to major news reporting media in the geographic area in which Indiana customers affected by the violation reside.

(h) A telecommunications service provider that maintains its own customer notification procedures as part of an information privacy policy or a security policy is not required to provide separate notice under this section if the telecommunications service provider's information privacy policy or security policy is at least as stringent as the notice requirements described in this section.

(i) If a violation described in subsection (b) involves the unauthorized acquisition or disclosure of confidential customer records that include any personal information (as defined in IC 24-4.9-2-10) of the affected Indiana customers:

(1) the telecommunications service provider; and

(2) any person described in subsection (c), if applicable;

shall provide notice in accordance with IC 24-4.9 instead of this section.

(j) A person that:

(1) is required to give notice under subsection (b) or (c); and

(2) fails:

(A) to give the required notice; or

(B) to give the notice in accordance with this section;

commits a deceptive act that is actionable only by the attorney general under this subsection. However, a failure to provide any required notice in connection with a related series of violations of this chapter constitutes one (1) deceptive act for purposes of this subsection. The attorney general may bring an action to obtain any remedy available under IC 24-4.9-4-2 for the breach of the security of a data system.

Sec. 9. (a) Subject to subsection (c), this section applies to a violation of this chapter, other than a violation of section 8 of this chapter, that occurs after June 30, 2007.

(b) A person who knowingly violates this chapter commits a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous unrelated conviction under this chapter.

(c) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

only the violation of section 4, 5, or 6 of this chapter may be

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prosecuted under this section.

Sec. 10. (a) Subject to subsection (c), this section applies to a violation of this chapter, other than a violation of section 8 of this chapter, that occurs after June 30, 2007.

(b) A person who violates this chapter commits a deceptive act that is:

(1) actionable by the attorney general under IC 24-5-0.5-4(c); and

(2) 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.

(c) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

only the violation of section 4, 5, or 6 of this chapter is a deceptive act subject to IC 24-5-0.5.

Sec. 11. (a) Subject to subsection (d), this section applies to a violation of this chapter, other than a violation of section 8 of this chapter, that occurs after June 30, 2007.

(b) Except as provided in section 12 of this chapter, a person who is aggrieved by a violation of this chapter may bring an action against any other person:

(1) responsible for; or

(2) who knowingly participated in;

the violation. An action under this subsection may be brought in the circuit or superior court of the county of residence of the person bringing the action.

(c) A person who brings an action under subsection (b) may seek any or all of the following damages:

(1) Statutory damages of five hundred dollars ($500) for each violation of this chapter.

(2) The person's actual damages, including court costs and attorney's fees.

(d) Upon petition by any person that another person has violated this chapter, the circuit or superior court of the petitioner's county of residence or principal place of business in Indiana may enjoin the respondent from further violations. The injunctive relief available under this subsection is in addition to any damages to which the petitioner may be entitled under subsection (c).

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(e) If a violation of section 4, 5, or 6 of this chapter:

(1) occurs after June 30, 2007; and

(2) involves the sale, transfer, purchase, receipt, use, or disclosure of confidential customer records obtained in violation of section 3 of this chapter before July 1, 2007;

only the violation of section 4, 5, or 6 of this chapter is actionable by a person, including a customer, under this section.

Sec. 12. A customer does not have a cause of action against a telecommunications service provider for a violation of this chapter unless the violation resulted from the telecommunications service provider's gross negligence or intentional wrongdoing.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1046 as introduced.)

RESKE, Chair

Committee Vote: yeas 9, nays 0.

SENATE MOTION

Madam President: I move that Senator Steele be added as cosponsor of Engrossed House Bill 1046.

KRUSE

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1046, 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, line 13, strike "attorney" and insert "**attorney's**".

Page 2, line 13, strike "attorney" and insert "**attorney's**".

Page 4, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 2. IC 24-5-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) As used in this chapter, "commercial telephone solicitation" means any unsolicited call to a subscriber when:

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(1) the person initiating the call has not had a prior business or personal relationship with the subscriber; and

(2) the purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) The term does not include calls initiated by the following:

(1) The state or a political subdivision (as defined by IC 36-1-2-13) for exclusively public purposes.

(2) The United States or any of its subdivisions for exclusively public purposes (involving real property in Indiana).

(3) A person conducting a public opinion poll, if the person does not solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

SECTION 3. IC 24-5-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) This section does not apply to messages:

(1) from school districts to students, parents, or employees;

(2) to subscribers with whom the caller has a current business or personal relationship; ~~or~~

(3) advising employees of work schedules; **or**

(4) surveying public opinion, if the survey does not include a solicitation for the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) A caller may not use or connect to a telephone line an automatic dialing-announcing device unless:

(1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or

(2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.".

Page 8, line 27, after "knowingly" insert "**and with intent to defraud**".

Page 9, line 29, delete "for any of the purposes set forth in 47 U.S.C. 222(d)" and insert "**as otherwise authorized by state or federal law**".

Page 9, line 39, delete "(h), and (i)," and insert "**(g), and (h),**".

Page 10, line 5, delete "notify each Indiana customer" and insert "**notify, in accordance with this chapter, Indiana customers**".

Page 10, delete lines 35 through 42, begin a new paragraph and insert:

"**(f) Except as provided in subsection (g), a telecommunications service provider shall provide any notice required under this section by one (1) or both of the following methods:**

(1) To each affected Indiana customer by:

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(A) United States mail; or

(B) electronic mail, if the customer has provided the telecommunications service provider with the customer's electronic mail address.

(2) By doing both of the following:

(A) Conspicuously posting notice of the violation on the web site of the telecommunications service provider, if the telecommunications service provider maintains a web site.

(B) Providing notice of the breach to major news reporting media in the geographic area in which Indiana customers affected by the violation reside.".

Page 11, delete lines 1 through 13.

Page 11, line 14, delete "(h)" and insert "**(g)**".

Page 11, line 20, delete "(i)" and insert "**(h)**".

Page 11, line 28, delete "(j)" and insert "**(i)**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1046 as printed February 16, 2007.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

C o p y