

SENATE BILL No. 514

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.7.

Synopsis: Do not mail list. Expands the coverage of the do not call list to include mail sent to consumers in Indiana through the United States mail soliciting the sale of consumer goods or services or a charitable contribution. Changes the name of the list to the "do not contact" list. Provides that a consumer may list either the consumer's residential telephone number or the consumer's mailing address, or both the consumer's residential phone number and mailing address, in the do not contact list. Changes the name of the "consumer protection division telephone solicitation fund" to the "do not contact fund". Repeals an obsolete definition.

Effective: July 1, 2011.

Simpson

January 18, 2011, read first time and referred to Committee on Judiciary.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 514



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:

- 1 SECTION 1. IC 24-4.7-1-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. This article does not
- 3 apply to any of the following:
- 4 (1) A ~~telephone call~~ **contact** made in response to an express
- 5 request of the person ~~called~~ **contacted**.
- 6 (2) A ~~telephone call~~ **contact** made primarily in connection with
- 7 an existing debt or contract for which payment or performance
- 8 has not been completed at the time of the ~~call~~ **contact**.
- 9 (3) A ~~telephone call~~ **contact** made on behalf of a charitable
- 10 organization that is exempt from federal income taxation under
- 11 Section 501 of the Internal Revenue Code, but only if all of the
- 12 following apply:
- 13 (A) The ~~telephone call~~ **contact** is made by a volunteer or an
- 14 employee of the charitable organization.
- 15 (B) **In the case of a telephone call**, the telephone solicitor
- 16 who makes the telephone call immediately discloses all of the
- 17 following information upon making contact with the



- 1 consumer:
- 2 (i) The solicitor's true first and last name.
- 3 (ii) The name, address, and telephone number of the
- 4 charitable organization.
- 5 (4) A ~~telephone call~~ **contact** made by an individual licensed
- 6 under IC 25-34.1 if:
- 7 (A) the sale of goods or services is not completed; and
- 8 (B) the payment or authorization of payment is not required;
- 9 until after a face to face sales presentation by the seller.
- 10 (5) A ~~telephone call~~ **contact** made by an individual licensed
- 11 under IC 27-1-15.6 or IC 27-1-15.8 when the individual is
- 12 soliciting an application for insurance or negotiating a policy of
- 13 insurance on behalf of an insurer (as defined in IC 27-1-2-3).
- 14 (6) A ~~telephone call~~ **contact** soliciting the sale of a newspaper of
- 15 general circulation, but only if the telephone call is made by a
- 16 volunteer or an employee of the newspaper.

17 SECTION 2. IC 24-4.7-2-2 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. "Consumer" means
 19 a ~~residential telephone subscriber~~ **an individual** who is an actual or a
 20 prospective:

- 21 (1) purchaser, lessee, or recipient of consumer goods or services;
- 22 or
- 23 (2) donor to a charitable organization.

24 SECTION 3. IC 24-4.7-2-3.7 IS ADDED TO THE INDIANA
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2011]: **Sec. 3.7. "Contact" refers to**
 27 **communication by either of the following:**

- 28 (1) **A telephone call made to the telephone number of a**
- 29 **residential telephone subscriber.**
- 30 (2) **Mail sent by United States mail.**

31 SECTION 4. IC 24-4.7-2-5 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. "Doing business in
 33 Indiana" means ~~making telephone sales calls to~~ **contacting** consumers
 34 located in Indiana whether the ~~telephone sales calls~~ **contacts** are made
 35 **initiated** from a location in Indiana or outside Indiana.

36 SECTION 5. IC 24-4.7-2-6 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. "Fund" refers to the
 38 ~~consumer protection division telephone solicitation~~ **do not contact**
 39 fund established by IC 24-4.7-3-6.

40 SECTION 6. IC 24-4.7-2-7 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. "Listing" refers to
 42 the ~~no telephone sales solicitation~~ **do not contact** listing published by

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1 the division under IC 24-4.7-3 that lists the names of persons who do
2 not wish to receive ~~telephone sales calls~~. **contacts.**

3 SECTION 7. IC 24-4.7-2-9 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. "~~Telephone~~ "Sales
5 ~~call~~" **contact**" means a ~~telephone call made~~ **contact made or sent to**
6 a consumer for any of the following purposes:

- 7 (1) Solicitation of a sale of consumer goods or services.
- 8 (2) Solicitation of a charitable contribution.
- 9 (3) Obtaining information that will or may be used for the direct
10 solicitation of a sale of consumer goods or services or an
11 extension of credit for such purposes.

12 The term includes a call made by use of automated dialing or recorded
13 message devices.

14 SECTION 8. IC 24-4.7-2-10 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. "~~Telephone~~
16 "Solicitor" means an individual, a firm, an organization, a partnership,
17 an association, or a corporation, including affiliates and subsidiaries,
18 doing business in Indiana.

19 SECTION 9. IC 24-4.7-3-1 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) A quarterly
21 listing of ~~telephone numbers~~ of Indiana consumers who ~~request do~~
22 ~~not to be solicited by telephone~~ **want to receive sales contacts** shall be
23 established, maintained, and published as provided in this section.

24 (b) The ~~telephone number of a consumer~~ **consumer's contact**
25 **information** shall be placed on the listing if the consumer requests to
26 be added to the listing according to a procedure approved by the
27 division. **A consumer must provide the following information to be**
28 **included on the listing:**

- 29 (1) **The consumer's telephone number, if the consumer does**
30 **not want to be contacted by telephone.**
- 31 (2) **The consumer's mailing address, if the consumer does not**
32 **want to be contacted by mail.**
- 33 (3) **Both the consumer's telephone number and the**
34 **consumer's mailing address, if the consumer does not want to**
35 **be contacted by telephone or by mail.**

36 (c) The listing shall be updated upon receipt of a request from a
37 consumer.

38 (d) A ~~telephone~~ solicitor may obtain a copy of the listing upon
39 request of the ~~telephone~~ solicitor as provided in this section.

40 (e) The division shall establish a fee to be paid by a ~~telephone~~
41 solicitor for obtaining a copy of the listing. The fee established under
42 this subsection may not exceed the amount necessary to cover the cost

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1 of providing the listing to ~~telephone~~ solicitors.
2 SECTION 10. IC 24-4.7-3-6, AS AMENDED BY P.L.85-2006,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2011]: Sec. 6. (a) The ~~consumer protection division telephone~~
5 ~~solicitation do not contact~~ fund is established for the purpose of the
6 administration of:
7 (1) this article; and
8 (2) IC 24-5-0.5-3(a)(19).
9 The fund shall be used exclusively for this purpose.
10 (b) The division shall administer the fund.
11 (c) The division shall deposit all revenue received:
12 (1) under this article; and
13 (2) from civil penalties deposited under IC 24-5-0.5-4(h);
14 in the fund.
15 (d) Money in the fund is continuously appropriated to the division
16 for the administration of:
17 (1) this article; and
18 (2) IC 24-5-0.5-3(a)(19).
19 (e) Money in the fund at the end of a state fiscal year does not revert
20 to the state general fund. However, if the amount of money in the fund
21 at the end of a particular state fiscal year exceeds two hundred
22 thousand dollars (\$200,000), the treasurer of state shall transfer the
23 excess from the fund to the state general fund.
24 SECTION 11. IC 24-4.7-4-1 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) A ~~telephone~~
26 solicitor may not make or cause to be made a ~~telephone sales call~~
27 **contact by telephone** to a telephone number if that telephone number
28 appears in the most current quarterly listing published by the division.
29 **(b) A solicitor may not make or cause to be made a sales contact**
30 **by mail to a mailing address if that mailing address appears in the**
31 **most current quarterly listing published by the division.**
32 SECTION 12. IC 24-4.7-4-6 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. A ~~telephone~~ solicitor
34 must also comply with all other applicable laws, including the
35 following, if applicable:
36 (1) IC 24-5-12.
37 (2) IC 24-5-14.
38 SECTION 13. IC 24-4.7-5-1, AS AMENDED BY P.L.222-2005,
39 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2011]: Sec. 1. A ~~telephone~~ solicitor who fails to comply with
41 any provision of IC 24-4.7-4 commits a deceptive act that is actionable
42 by the attorney general under this chapter. In addition, a contractor who

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1 contracts or seeks to contract with the state:
 2 (1) may be prohibited from contracting with the state; or
 3 (2) may have an existing contract with the state voided;
 4 if the contractor, an affiliate or principal of the contractor, or any agent
 5 acting on behalf of the contractor or an affiliate or principal of the
 6 contractor does not or has not complied with the terms of this article,
 7 even if this article is preempted by federal law.
 8 SECTION 14. IC 24-4.7-5-2 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. In an action under
 10 this chapter, the attorney general may obtain any or all of the following:
 11 (1) An injunction to enjoin future violations of IC 24-4.7-4.
 12 (2) A civil penalty of not more than the following:
 13 (A) Ten thousand dollars (\$10,000) for the first violation of
 14 IC 24-4.7-4.
 15 (B) Twenty-five thousand (\$25,000) dollars for each violation
 16 after the first violation.
 17 For purposes of this subdivision, each telephone call **or each**
 18 **mailing** in violation of IC 24-4.7-4-1 is considered a separate
 19 violation.
 20 (3) All money the defendant obtained through violation of
 21 IC 24-4.7-4.
 22 (4) The attorney general's reasonable costs in:
 23 (A) the investigation of the deceptive act; and
 24 (B) maintaining the action.
 25 (5) Reasonable attorney's fees.
 26 (6) Costs of the action.
 27 SECTION 15. IC 24-4.7-2-8 IS REPEALED [EFFECTIVE JULY
 28 1, 2011].

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