

# HOUSE BILL No. 1123

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.7; IC 24-5.

**Synopsis:** Telephone solicitation. Defines "executive officer" for purposes of the telephone solicitation law. Provides that an executive officer of a person that violates the telephone solicitation law commits a separate deceptive act actionable by the consumer protection division. Requires the consumer protection division of the office of the attorney general (division) to amend its rules to allow businesses to be included in the quarterly listing of telephone numbers of persons that request not to be solicited by telephone. Allows the division to use the consumer protection division telephone solicitation fund (fund) to: (1) administer the statutes concerning: (A) the registration of telephone solicitors; and (B) the regulation of automatic dialing machines; and (2) reimburse county prosecutors for expenses incurred in extraditing violators of these and other state and federal statutes concerning telephone solicitations. (Current law provides that the fund may only be used to administer: (1) the state's "do not call" statute; (2) the federal statute concerning restrictions on the use of telephone equipment; and (3) the state statute concerning misleading or inaccurate caller identification.) Increases the penalty for: (1) failure to register with the division by a seller that makes certain solicitations from a Level 6 felony to a Level 5 felony; (2) violating regulations regarding use of automatic dialing machines from a Class C misdemeanor to a Level 6 felony; and (3) violation of regulations regarding use of false or misleading caller identification information from a Class B misdemeanor (or Class A misdemeanor for repeat offenses) to a Level 6 felony. Provides that all sellers that make certain solicitations must register with the division. (Under current law, registration is required only if the solicitation involves consideration of more than \$100 and less than \$50,000.)

**Effective:** July 1, 2019.

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## Ellington

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January 7, 2019, read first time and referred to Committee on Utilities, Energy and Telecommunications.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

# HOUSE BILL No. 1123

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 24-4.7-2-2, AS AMENDED BY P.L.226-2011,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 2. (a) "Consumer" means a ~~residential~~ telephone  
4 subscriber who:  
5 (1) for the telephone service received:  
6 (A) has a place of primary use in Indiana; or  
7 (B) is issued an Indiana telephone number or an Indiana  
8 identification number; and  
9 (2) is an actual or a prospective:  
10 (A) purchaser, lessee, or recipient of consumer goods or  
11 services; or  
12 (B) donor to a charitable organization.  
13 (b) The term includes a user of a prepaid wireless calling service (as  
14 defined in IC 6-2.5-1-22.4) who:  
15 (1) is issued an Indiana telephone number or an Indiana  
16 identification number for the service; or  
17 (2) purchases prepaid wireless calling service in a retail



- 1 transaction that is sourced to Indiana (as determined under  
 2 IC 6-2.5-12-16).
- 3 SECTION 2. IC 24-4.7-2-5.5 IS ADDED TO THE INDIANA  
 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 5 [EFFECTIVE JULY 1, 2019]: **Sec. 5.5. "Executive officer" means a**  
 6 **person who is or performs the duties of the:**
- 7 (1) **president;**
  - 8 (2) **chief executive officer;**
  - 9 (3) **treasurer; or**
  - 10 (4) **chief financial officer;**
- 11 **of a company.**
- 12 SECTION 3. IC 24-4.7-2-8, AS AMENDED BY P.L.226-2011,  
 13 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14 JULY 1, 2019]: **Sec. 8. "Telephone number" means a residential**  
 15 **telephone number that:**
- 16 (1) is assigned to a subscriber who has a place of primary use in  
 17 Indiana; or
  - 18 (2) otherwise represents an Indiana telephone number or is  
 19 associated with an Indiana identification number.
- 20 SECTION 4. IC 24-4.7-3-1.5 IS ADDED TO THE INDIANA  
 21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2019]: **Sec. 1.5. (a) The division shall allow**  
 23 **businesses to be included in the quarterly listing of telephone**  
 24 **numbers of persons that request not to be solicited by telephone.**
- 25 **(b) Before January 1, 2020, the division shall adopt emergency**  
 26 **rules in the manner provided under IC 4-22-2-37.1 to implement**  
 27 **this section. The emergency rules expire on the earlier of:**
- 28 (1) **the date permanent rules are adopted under subsection**  
 29 **(c); or**
  - 30 (2) **July 1, 2020.**
- 31 **(c) Before July 1, 2020, the division shall adopt permanent rules**  
 32 **under IC 4-22-2-24 through IC 4-22-2-36 to implement this section.**
- 33 SECTION 5. IC 24-4.7-3-6, AS AMENDED BY P.L.65-2014,  
 34 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2019]: **Sec. 6. (a) The consumer protection division telephone**  
 36 **solicitation fund is established for the purpose of the following:**
- 37 (1) The administration of:
- 38 (†) (A) this article;
  - 39 (‡) (B) IC 24-5-0.5-3(b)(19); and
  - 40 (C) IC 24-5-12;
  - 41 (D) IC 24-5-14; and
  - 42 (‡) (E) IC 24-5-14.5.



- 1           **(2) The reimbursement of county prosecutors for expenses**  
 2           **incurred in extraditing violators of any statute set forth in**  
 3           **subdivision (1).**  
 4           The fund shall be used exclusively for ~~this purpose:~~ **these purposes.**  
 5           (b) The division shall administer the fund.  
 6           (c) The division shall deposit all revenue received:  
 7               (1) under this article;  
 8               (2) from civil penalties deposited under IC 24-5-0.5-4(h); and  
 9               (3) from civil penalties deposited under IC 24-5-14.5-12;  
 10          in the fund.  
 11          (d) Money in the fund is continuously appropriated to the division  
 12          for the ~~administration of:~~  
 13               ~~(1) this article;~~  
 14               ~~(2) IC 24-5-0.5-3(b)(19); and~~  
 15               ~~(3) IC 24-5-14.5: purposes set forth in subsection (a).~~  
 16          (e) Money in the fund at the end of a state fiscal year does not revert  
 17          to the state general fund. However, if the amount of money in the fund  
 18          at the end of a particular state fiscal year exceeds two hundred  
 19          thousand dollars (\$200,000), the treasurer of state shall transfer the  
 20          excess from the fund to the state general fund.  
 21          SECTION 6. IC 24-4.7-5-1, AS AMENDED BY P.L.153-2017,  
 22          SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23          JULY 1, 2019]: Sec. 1. **(a)** A telephone solicitor, a supplier, or a caller  
 24          who fails to comply with any provision of IC 24-4.7-4 commits a  
 25          deceptive act that is actionable by the attorney general under this  
 26          chapter.  
 27          **(b)** A person who directly or indirectly controls a person that fails  
 28          to comply with any provision of IC 24-4.7-4 commits a separate  
 29          deceptive act that is actionable by the attorney general under this  
 30          chapter.  
 31          **(c) If:**  
 32               **(1) the person described in subsection (b) is the executive**  
 33               **officer of a telephone solicitor, a supplier, or a caller; and**  
 34               **(2) the telephone solicitor, supplier, or caller fails to comply**  
 35               **with any provision of IC 24-4.7-4;**  
 36          **the person described in subsection (b) commits a separate**  
 37          **deceptive act that is actionable by the attorney general under this**  
 38          **chapter.**  
 39          **(d) In addition,** A contractor who contracts or seeks to contract with  
 40          the state:  
 41               (1) may be prohibited from contracting with the state; or  
 42               (2) may have an existing contract with the state voided;



1 if the contractor, an affiliate or principal of the contractor, a person that  
 2 directly or indirectly controls the contractor, any agent acting on behalf  
 3 of the contractor or an affiliate or principal of the contractor, or a  
 4 person that directly or indirectly controls the agent does not comply or  
 5 has not complied with the terms of this article, even if this article is  
 6 preempted by federal law.

7 SECTION 7. IC 24-5-12-10 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) Before doing  
 9 business in Indiana, a seller must register with the division. ~~if the seller~~  
 10 ~~attempts a solicitation under which the seller offers an item or items~~  
 11 ~~where the total consideration has a value of more than one hundred~~  
 12 ~~dollars (\$100) and less than fifty thousand dollars (\$50,000):~~

13 (b) A person does business in Indiana if the person solicits:

14 (1) from a location in Indiana; or

15 (2) a prospect who is located in Indiana.

16 SECTION 8. IC 24-5-12-22, AS AMENDED BY P.L.158-2013,  
 17 SECTION 275, IS AMENDED TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2019]: Sec. 22. A seller who fails to comply  
 19 with sections 10 through 16 of this chapter commits a Level ~~6~~ **5** felony.

20 SECTION 9. IC 24-5-14-10 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. A caller who fails  
 22 to comply with this chapter commits a ~~Class C misdemeanor: Level 6~~  
 23 ~~felony.~~ **Level 6**

24 SECTION 10. IC 24-5-14-13 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. A caller who  
 26 violates this chapter commits a deceptive act that is actionable by the  
 27 attorney general under IC 24-5-0.5-4 and that is subject to:

28 (1) the remedies and penalties under IC 24-5-0.5-4(c),  
 29 IC 24-5-0.5-4(d), and IC 24-5-0.5-4(f); ~~IC 24-5-0.5-4(g); and~~  
 30 ~~IC 24-5-0.5-8; and~~

31 (2) a civil penalty of not more than the following:

32 (A) Ten thousand dollars (\$10,000) for the first violation.

33 (B) Twenty-five thousand dollars (\$25,000) for each  
 34 violation after the first violation.

35 SECTION 11. IC 24-5-14.5-11, AS ADDED BY P.L.151-2013,  
 36 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2019]: Sec. 11. A person who knowingly violates this chapter  
 38 commits a ~~Class B misdemeanor. However, the offense is a Class A~~  
 39 ~~misdemeanor if the person has a previous unrelated conviction under~~  
 40 ~~this chapter: Level 6 felony.~~ **Level 6 felony.**

